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Report of the Independent Expert on the promotion of a democratic and equitable international order*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the thematic report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, prepared pursuant to Council resolution 33/3.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 33/3, in which the Council invited the Independent Expert to continue his research into the impact of the financial and economic policies pursued by international organizations and other institutions, in particular the World Bank and the International Monetary Fund, on a democratic and equitable international order.

2. Following an expert consultation hosted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva in October 2016, the Independent Expert decided to focus his report to the Council on the World Bank, and to devote his report to the General Assembly to International Monetary Fund (IMF) issues. The two reports should be read together, conscious that in the twenty-first century there are no "human rights-free zones",[1] that all States, international organizations and non-State actors must respect the customary international law of human rights, and that the so-called "fragmentation" of international law cannot create "stand-alone regimes" or "legal black holes".

3. While international financial institutions can advance human rights and development, some of their policies have resulted in the erosion of the enabling human rights environment in some countries, especially through the promotion of neoliberal policies that weaken the public sector and hinder States in the fulfilment of their human rights treaty obligations in the fields of education, health care, labour standards and an adequate standard of living. Moreover, by financing enterprises that evade taxes, the World Bank abets the diversion of public resources away from public services. Increased Bank support for public-private partnerships enhances the private sector at the expense of communities, especially when investments go awry and result in greater costs to governments. Henceforth, international financial institutions should take a human rights-based approach to lending, consult stakeholders, conduct impact assessments, take action to counter reprisals, combat corruption and accept legal responsibilities by waiving "absolute immunity".

4. The Independent Expert believes that, since the World Bank and IMF have association agreements with the United Nations, they must support the General Assembly, the Economic and Social Council and the United Nations Conference on Trade and Development (UNCTAD) in advancing the purposes and principles of the United Nations, as set out in the Charter of the United Nations, and in advancing human rights and sustainable development, while respecting the sovereign equality of States and the principle of non-intervention in the domestic affairs of States. It bears repeating that the member States of the World Bank and IMF are also States parties to numerous United Nations human rights treaties, notably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and that they must ensure that the policies of financial institutions and the projects they support do not have adverse effects on human rights.[2]

5. Bearing in mind that States have an obligation to ensure that investors and transnational corporations do not violate human rights,[3] States should use their leverage to strengthen the human rights regime whenever they negotiate deals with governments to finance specific projects.[4] In that regard, the Independent Expert recalls the commitments made in 2015 by States at the United Nations summit for the adoption of the post-2015

[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16517&LangID=E and www.nytimes.com/2016/06/27/opinion/the-world-bank-should-champion-human-rights.html.

[2] See the text of the draft articles on the responsibility of international organizations prepared by the International Law Commission and published in the report on its sixty-third session (A/66/10), para. 87.

[3] See the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

[4] See the International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

development agenda and the adoption by the General Assembly of the Sustainable Development Goals (see General Assembly resolution 70/1). The Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted in 2015, also calls upon all development banks to establish or maintain social and environmental safeguards systems (see General Assembly resolution 69/313, annex, para. 75).

6. In January 2016, the Independent Expert sent questionnaires to the World Bank, IMF, States, intergovernmental organizations and non-governmental organizations (NGOs) (see annex 1). He expresses deep appreciation for their cooperation and the many statistics and clarifications received.

7. In April 2017, he attended several events at the spring meeting of the World Bank and IMF, conducted bilateral exchanges with lawyers and economists in both institutions, and liaised with civil society organizations. He endorses the pertinent studies and reports of OHCHR and special procedure mandate holders who have focused on manifold aspects of the work of international financial institutions (see annex 2). He draws insight from substantive studies prepared by NGOs[5] and academics.

8. The World Bank Group is composed of the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the International Development Association (IDA), the Multilateral Investment Guarantee Agency and the International Centre for Settlement of Investment Disputes. Since 2012, Jim Yong Kim has been President of the World Bank Group. The present report focuses on the work of IBRD and IFC.

9. The publications of the World Bank Group document their awareness of impacts on human rights. The evolution of the Bank's own social assessment framework acknowledges the Bank's human rights responsibilities. The present report does not aspire to tell the Bank what it already knows or what its experts are busy trying to address. It hopes to formulate realistic recommendations, applying a human rights-based approach. In that regard, the Bank's Articles of Agreement should be amended to integrate the promotion of human rights, and directives should be issued by the Board of Governors to mainstream human rights. A revised mission statement that reconciles the economic and financial priorities with human rights is desirable.[6] Even the words written on the great wall at the entrance of the Bank ("Our dream is a world free of poverty") serve as a call for action.

10. Over the past 60 years, the activities of IFC, which was established in 1956, have given rise to more criticism than that usually directed at the World Bank. As the Bank's private lending arm, IFC also has idealistic language on its website, where it boasts that the Bank's mission "is to fight poverty with passion and professionalism, for lasting results".[7] The Independent Expert agrees that that mission is achievable.

II. Positive features

11. The World Bank acknowledges that "sustainable development recognizes that growth must be both inclusive and environmentally sound to reduce poverty and build shared prosperity for today's population and to continue to meet the needs of future generations. It is efficient with resources and carefully planned to deliver both immediate and long-term benefits for people, planet, and prosperity".[8]

12. To that end, in 2006 the Bank adopted the Environmental and Social Framework, comprising:

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[5] See www.oxfam.org/en/tags/world-bank and www.oxfam.org/en/pressroom/pressreleases/2016-10-03/new-links-expose-world-bank-group-investments-and-human-rights.

[6] See www.youtube.com/watch?v=TyOUpmcq2Y.

[7] See www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new/IFC+Governance.

[8] See www.worldbank.org/en/topic/sustainabledevelopment/overview.

- A vision for sustainable development, which sets out the Bank's aspirations regarding environmental and social sustainability;
- An environmental and social policy for project financing, setting out mandatory requirements for projects it supports;
- Ten environmental and social standards, setting out mandatory requirements for borrowers and projects.

13. The vision statement of the new Environmental and Social Framework formulates a strategy that "sets out the corporate goals of ending extreme poverty and promoting shared prosperity in all its partner countries", including goals relevant to human rights, such as environmental sustainability, social inclusion and the preservation of resources. Within the Framework, 10 environmental and social standards, which are designed to support borrowers' projects, focus on: (a) social risks and impacts; (b) labour and working conditions; (c) pollution prevention; (d) health and safety; (e) land acquisition, land use and involuntary resettlement; (f) sustainable management of living natural resources; (g) indigenous peoples; (h) cultural heritage; (i) financial intermediaries; and (j) stakeholder engagement and information disclosure.

14. The vision goes beyond "do no harm" and aims at maximizing development gains. Thus, where the borrower's environmental and social assessment has identified potential development opportunities associated with a project, the Bank will discuss with the borrower the feasibility of incorporating those opportunities into the project. Moreover, the Bank is committed to work with borrowers to identify strategic initiatives and goals to address national development priorities and maintain dialogue on environmental and social issues with donor governments, international organizations, countries of operation and civil society.

15. There is no shortage of opinions about the impact of the World Bank on the international order. Some observers contend that the Bank and IMF have a greater impact on world affairs than all the resolutions of the United Nations General Assembly and the Economic and Social Council combined. While the supremacy clause in Article 103 of the Charter of the United Nations stipulates that the Charter shall prevail over all other international agreements, the fact is that the Bretton Woods institutions are not subordinated to the General Assembly and the Security Council and that they will continue to have a determining effect on world affairs, including the enjoyment of civil, cultural, economic, political and social rights.

16. Many in academia have been studying the impact of World Bank policies on human rights and the international order. Already in 2003 the Tilburg Guiding Principles on World Bank, IMF and Human Rights were adopted.[9] A follow-up conference at the University of Tilburg, in the Netherlands, entitled "Globalization and Transnational Human Rights Obligations", led to the adoption of the Tilburg-Glothro Guiding Principles in 2015 (see annex 3). Similarly, in 2009, the Indian Law Resource Centre issued the "Principles of International Law for Multinational Development Banks",[10] in which scholars refuted the argument that the international financial institutions are somehow above the law and that they only have to honour their charters and constitutions.

17. Whereas the Bank has the word "development" in its name, the question must be answered what development means for the purposes of the Articles of Agreement. Hitherto, both in doctrine and in practice, the Bank has understood development to mean growth in terms of gross domestic product (GDP), increased trade and greater consumption. Observers have been proposing a different understanding of "development", as a more equitable distribution of wealth, food security, clean water, sanitation, health care, housing,

[9] See Willem van Genugten, *The World Bank Group, the IMF and Human Rights: A Contextualized Way Forward* (Cambridge, Intersentia, 2015).

[10] See http://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1001&context=free-prior-and-informed-consent. See also Günther Handl, "Multilateral Development Banking", available from www.meraki-autoworks.com/multilateral-development-banking-environmental-principles-and-concepts-reflecting-general-international.pdf.

education and employment. The inequalities among States and within States, however, have been growing in many countries, where unemployment has increased, particularly affecting young people, and the actual standard of living has dropped.

III. Challenges

18. Notwithstanding the positive developments described above, both the Bank and IMF continue pressing for increased reliance on purely market-based solutions, following the perspective of "market fundamentalism" that Joseph Stiglitz often decried.[11] In 2016, there was increased cooperation among multilateral development banks, with a focus on mega-infrastructure projects, a reliance on public-private partnerships[12] as a way to circumvent constrained fiscal space, and a continued effort to impose so-called labour flexibilization and other obsolete conditionalities on States.

19. As Naomi Klein recalls in her seminal work, The Shock Doctrine, the main problem remains the commitment of international financial institutions to the philosophy of laissez-faire economics, reflecting Milton Friedman's Chicago school and characterized by the almost religious belief that privatization and deregulation will advance GDP, notwithstanding its endemic boom and bust cycles and its minimization of social costs.[13]

20. For many years, civil society has signalled human rights abuses committed by companies benefiting from World Bank financing, with numerous publications documenting those abuses. Among the most egregious violations are land-grabbing, brutal evictions, involuntary resettlement, forced labour,[14] child labour, sexual abuse, massive pollution, destruction of the environment, reprisals against human rights defenders, corruption and money-laundering. The present report summarizes a few salient cases that are representative of widespread violations.

21. Ahead of the Bank spring meeting in April 2016, Oxfam released a report entitled "The IFC and tax havens", in which it revealed that 51 of the 68 companies in which IFC had invested in sub-Saharan Africa in 2015 used tax havens.[15] As described in the Independent Expert's 2016 report to the General Assembly (A/71/286), that risks depriving countries in the region of essential tax revenue which could be used to meet their human rights obligations, fulfil the Sustainable Development Goals and repay foreign debts. In fact, UNCTAD estimates that developing countries lose $100 billion annually in tax revenue, from which lost revenues and uninvested earnings yield a total development finance loss in the range of $250-300 billion.[16] It is time for the Bank to blacklist projects with companies that fail to pay their taxes.

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[11] See Joseph Stiglitz, "Moving beyond market fundamentalism to a more balanced economy", *Annals of Public and Cooperative Economics*, vol. 80, No. 3 (2009). See also www.globalpolicy.org/social-and-economic-policy/the-three-sisters-and-other-institutions/internal-critics-of-the-world-bank-and-the-imf/42796-joseph-stiglitz.html.

[12] See www.worldbank.org/en/topic/publicprivatepartnerships, https://ppp.worldbank.org/public-private-partnership/overview/world-bank-group and https://ieg.worldbankgroup.org/Data/reports/lp_Health_PPP_1116.pdf.

[13] See www.ipsnews.net/2017/06/east-asian-miracle-myth-making/.

[14] See www.theguardian.com/global-development/2017/jun/27/world-bank-funds-linked-to-forced-labour-in-uzbekistan.

[15] See www.oxfamsol.be/sites/default/files/documents/bn-ifc-tax-havens-110416-embargo-en.pdf. See also www.oxfam.org/en/pressroom/pressreleases/2016-04-11/majority-world-banks-private-investments-go-companies-have and www.oxfam.org/en/pressroom/pressreleases/2016-12-12/worlds-worst-corporate-tax-havens-exposed-oxfam-report-reveals. www.oxfam.org/sites/www.oxfam.org/files/bp-race-to-bottom-corporate-tax-121216-en.pdf.

[16] See UNCTAD, *World Investment Report 2015*, chap. V, available from unctad.org/en/PublicationsLibrary/wir2015_en.pdf. See also www.taxjustice.net/2015/03/26/unctad-multinational-tax-avoidance-costs-developing-countries-100-billion/.

22. There is ample evidence that projects financed by the Bank cause harm to millions of people. A 2015 report by the International Consortium of Investigative Journalists states that from 2009 to 2013, the Bank pumped $50 billion into projects graded the highest risk for "irreversible or unprecedented" social or environmental impacts.[17] The report also indicates that the Bank and IFC have financed governments and companies accused of human rights violations, including murder and torture. In some cases, they continue to finance those borrowers notwithstanding the evidence.[18]

A. Environmental degradation, evictions and forced resettlement[19]

23. Among the vulnerable groups that have suffered as a consequence of major prospecting, mining, logging and hydroelectric enterprises are indigenous peoples whose lands have been taken away or devastated though industrial activity, without consultation and without their free, prior and informed consent.[20]

24. In 2015, the International Consortium of Investigative Journalists determined that 3.4 million persons had been physically or economically displaced by projects funded by the Bank, including Ethiopian Anuak, who faced a violent campaign of mass evictions funded through the diversion of funds from a Bank-supported project.[21]

25. In 2016, the Consortium reported on the Bank's support to an agribusiness project that violated safeguards for indigenous people in Tanzania. Following massive protests by NGOs, the Bank initially retreated, but in March 2016 the Bank's Board granted a full waiver of its safeguard policy (Operational Policy 4.10), creating an unfortunate precedent. At issue was a $70 million loan to the Southern Agricultural Growth Corridor of Tanzania (SAGCOT), a government initiative that evicted indigenous herders in the Barabaig region in order to transfer fertile agricultural lands to investors.[22] The Consortium has also reported on abuses in the mining sector,[23] including those connected with gold mining in Peru.[24]

26. The waiver of the Bank's Operational Policy on Indigenous Peoples was the subject of a communication addressed in February 2017 to the Bank by the Special Rapporteur on the rights of indigenous peoples and the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. The communication noted that:

> The SAGCOT project may have a significant impact on nomadic and semi-nomadic pastoralist groups that self-identify as indigenous peoples, including the Barbaig, the Datoga, the Hadzabe and the Maasai, who depend on lands in the project areas for their daily livelihood and survival … we think that it is essential that projects aimed

[17] See www.counterpunch.org/2017/03/24/world-bank-declares-itself-above-the-law/.

[18] See www.icij.org/blog/2015/04/icijs-world-bank-probe-draws-global-attention.

[19] Alfred de Zayas, "Forced Population Transfer", in *The Max Planck Encyclopaedia of Public International Law, Vol. IV*, Rüdiger Wolfrum, ed. (Oxford, Oxford University Press, 2012), pp. 165-175.

[20] See the United Nations Declaration on the Rights of Indigenous Peoples, arts. 10-11, 19, 28, 30 and 32.

[21] See www.icij.org/blog/2015/04/new-investigation-reveals-34m-displaced-world-bank and http://projects.huffingtonpost.com/worldbank-evicted-abandoned/new-evidence-ties-worldbank-to-human-rights-abuses-ethiopia.

[22] *Bretton Woods Observer*, Autumn 2016, p. 7. Available from www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf. See also http://documents.worldbank.org/curated/en/215191467995074230/pdf/103990-SU-P125728-IDA-SU2016-0001-OUO-9.pdf and www.huffingtonpost.com/entry/world-bank-allows-tanzania-to-sidestep-rule-protecting-indigenous-groups_us_57607769e4b09c926cfd6b1c.

[23] See www.brettonwoodsproject.org/2014/06/world-bank-mines-threatening-livelihoods/.

[24] See http://projects.huffingtonpost.com/worldbank-evicted-abandoned/how-worldbank-finances-environmental-destruction-peru.

> at improving the social safety net in Tanzania are designed in such a manner that Indigenous People can benefit from them … and that Indigenous People are fully consulted.[25]

27. The Special Rapporteur and the Independent Expert concluded that "the granting by the Board of waivers to OP 4.10 … is problematic both from a normative and an operational point of view. By taking for granted the unilateral contention that OP 4.10 contradicts the provisions of the national constitution … this generates evident protection gaps with relation to the rights of indigenous groups".[26]

28. In its response of March 2017, the Bank argued that "the project preparation team drew upon the advice of local and international experts and Indigenous Peoples' representatives. In particular, the government agreed to prepare a safeguards instrument aligned with the requirements of OP 4.10, known as the Vulnerable Groups Planning Framework (VGPF)".[27]

29. It further clarified that:

> The World Bank's Board of Executive Directors took account of the project design, the legal documents including the legal covenants related to the VGPF, and approved the SAGCOT Investment Project … the sub-project eligibility criteria has been designed to limit the potential impact of sub-projects on the land rights of host communities — the Project will not support investments that involve the reallocation of land from smallholders to agribusinesses.[28]

30. Human Rights Watch has also highlighted instances in which the Bank failed to observe its own policy of protecting indigenous peoples' rights. For example, it documented the forcible transfer of the semi-nomadic Nuer people in the Gambella region of Ethiopia, noting an operational link between World Bank projects and a government relocation programme known as "villagization". The matter came before the Bank Inspection Panel, which indeed found that the Bank "did not carry out the required full risk analysis, nor were its mitigation measures adequate".[29]

31. In 2014, the Bank approved a $73 million grant for the Inga hydropower project in the Democratic Republic of Congo, despite the Board noting "significant implementation risks". In July 2016, the Bank suspended funding. The NGO International Rivers commented that the Bank should not have been involved in the project in the first place, because "Inga represents a failed development model which bypasses the poor for the benefit of extractive industry and export markets".[30]

B. Labour rights violations

32. Civil society has also drawn attention to labour rights violations in connection with World Bank projects. Human Rights Watch's "Toxic Toil" report, for example, documents the flagrant violation of children's rights and the exposure of child labourers to mercury poisoning in Tanzania. In it, Human Rights Watch calls upon the gold mining industry to establish a thorough due diligence process, including regular monitoring, to eliminate child labour in supply chains.[31]

33. Further, in commenting on the Bank's compliance investigation into an IFC investment in Indian tea plantations, Human Rights Watch notes:

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[25] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22932.

[26] Ibid.

[27] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=49127.

[28] Ibid.

[29] See www.hrw.org/news/2015/02/23/world-bank-address-ethiopia-findings.

[30] *Bretton Woods Observer*, Autumn 2016, p. 2. Available from www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

[31] See www.hrw.org/report/2013/08/28/toxic-toil/child-labor-and-mercury-exposure-tanzanias-small-scale-gold-mines.

> The IFC invested millions … without taking into account serious labor and other human rights abuses in the sector…The IFC failed to identify and address basic risks, including the grossly inadequate living conditions for workers and child labor … IFC deficiencies have been in part due to its culture and incentives that measure results in financial terms, encouraging staff to "overlook, fail to articulate, or even conceal potential environmental, social, and conflict related risks.[32]

34. Moreover, in the past, IFC has failed to properly measure the risks of oil and mining projects, such as in the case of the Chad-Cameroon pipeline. In that case, a law intended to earmark oil revenues for education, health care and other social needs was gutted in Chad and the Bank ultimately had to suspend its loan to the country.[33]

35. Although Cameroon has ratified most of the International Labour Organization (ILO) Conventions regulating labour and workers' living conditions, and World Bank clients are obliged to enforce Bank directives on occupational health and safety, violations of workers' rights continue unabated. One example concerns China International Water and Electric Corporation, which participates in the Bank-financed Lorn Pangor Hydro Power Project, which has witnessed repeated complaints made to the Bank concerning environmental and social management problems. In January 2014, a report by the Cameroon Network of Human Rights Organizations called the human rights situation on the project site deplorable. The Electricity Development Corporation of Cameroon and the labour inspector have failed to compel the Corporation to respect labour legislation.[34]

C. Circumventing rules by outsourcing

36. Beyond the direct harm caused by some World Bank projects, civil society advocates have pointed out that the Bank has been funding human rights-insensitive corporations indirectly, through intermediary banks. A discrete or "invisible" way of doing that occurred when IFC financed six Indian commercial banks that in turn financed abusive companies. As reported by Inclusive Development International:

> Recipients of indirect IFC funds include Vedanta Resources, NHPC Limited and Jindal Steel & Power, which have well-documented records of complicity in grave human rights violations and environmental destruction. These companies would have little chance of receiving direct assistance from the IFC. Yet by outsourcing its development funds to for-profit commercial banks, the IFC is … concealing its support from public scrutiny. In doing so, the IFC is providing little oversight in how its funds are used.[35]

37. Inclusive Development International has identified 68 Indian companies or projects implicated in serious harmful environmental impacts or abusive human rights practices that received funding from IFC intermediaries. As noted in the report, "we're seeing a worrying trend — not just at the World Bank but other development banks too — of hands-off lending through third parties to projects they would never usually touch. At the same time, the Bank is washing its hands of the mounting human and environmental costs — to forests, rivers and communities".[36]

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[32] See www.hrw.org/news/2016/11/08/world-bank-group-india-tea-investment-tramples-rights.

[33] See www.oxfamamerica.org/press/aid-group-lauds-new-world-bank-policies-on-indigenous-rights-and-oil-and-mining-transparency/.

[34] *Bretton Woods Observer*, Autumn 2016, p. 3. Available from www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

[35] See www.inclusivedevelopment.net/new-report-reveals-the-world-banks-murky-financial-entanglements-with-indias-most-irresponsible-corporations/ and www.inclusivedevelopment.net/wp-content/uploads/2017/04/Outsourcing-Development-India.pdf.

[36] See www.inclusivedevelopment.net/new-report-reveals-the-world-banks-murky-financial-entanglements-with-indias-most-irresponsible-corporations/.

38. Similarly, an October 2016 briefing note by Oxfam states:

> Over the past six years, the International Finance Corporation has channelled over $50bn to the financial sector, and its long-term investments in financial intermediaries such as commercial banks and private equity funds have dramatically risen by 45 per cent …. However, the evidence continues to grow that … the World Bank Group has little control over how a great deal of this money is spent. This lack of accountability is having devastating impacts on many poor communities.[37]

39. While some progress is being achieved, as Oxfam commented at the end of the 2017 World Bank and IMF meeting, still more could be done, "we're encouraged by the IFC's commitments to improve oversight and be more selective of its high-risk financial intermediary investments. … What we're still waiting for, and which is key, is transparency from the IFC to show where their money is really ending up".[38]

D. Public-private partnerships

40. Many civil society organizations have protested the Bank's apparent commitment to the promotion of public-private partnerships, notwithstanding the challenges they pose to the regulatory space of governments, especially in the fields of clean water and sanitation, health services and education. In fact, the year 2016 was characterized by an intensified push for megaprojects and public-private partnerships.[39]

41. However, experience shows that public-private partnerships have not served developing countries well. For example, it appears that the flagship health public-private partnership of IFC threatens to disrupt health-care programmes in Lesotho. In 1999, the Queen Mamohato Memorial Hospital, a new hospital run by the private sector and financed through an IFC loan, was built to replace the old main public hospital in Lesotho. Lesotho finds itself locked into an 18-year contract that is already consuming more than half of the country's health budget, while producing high returns to the private partner.[40] That constitutes a dangerous diversion of scarce public funds from primary health-care services in rural areas, where three quarters of the population live. Not only are health public-private partnerships high risk and costly, they fail to advance the goal of universal and equitable health coverage.

42. In another case, in August 2016, the Minister of Education of Uganda announced the closure of 63 nursery and primary schools operated by Bridge International Academies, a private education services provider partly financed by IFC. The Minister stated that the decision was based on "danger from poor hygiene and sanitation on the life and safety of the innocent children".[41]

43. Similarly, in its response to the questionnaire sent by the Independent Expert, Open Society, Armenia, observed that, despite spending more than $100 million to support the Armenian education system, almost no systemic impact or improvement was recorded from an education public-private partnership supported by the Bank. On the contrary, the loans served to increase unequal access to quality education. Elsewhere in Europe, after examining the use of public-private partnerships in Portugal, the Organization for Economic Cooperation and Development (OECD) warned that public-private partnerships "should be chosen only when they represent good value for money, not because they allow the government to escape budget restrictions by building up off-balance sheet liabilities".[42]

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[37] See www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bn-ifc-owning-outcomes-031016-en_0.pdf.

[38] See www.oxfam.org/en/pressroom/reactions/no-breakthrough-big-issues-spring-meetings.

[39] See www.brettonwoodsproject.org/2017/02/bank-imf-2016-year-review/ and www.brettonwoodsproject.org/2017/04/world-bank-undermines-right-universal-healthcare/.

[40] See www.oxfam.org/en/research/dangerous-diversion.

[41] *Bretton Woods Observer*, Autumn 2016, p. 2. Available from www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

[42] See www.oecd-ilibrary.org/economics/oecd-economic-surveys-portugal-2012_eco_surveys-prt-2012-en, p. 26.

Worryingly, however, OECD has continued to endorse public-private partnerships, stating that "the government should consider expanding its remit to local public-private partnerships and water, sewage and waste sectors".[43]

E. Reprisals

44. Although development banks increasingly acknowledge the importance of public participation for effective development, a growing number of governments have embarked upon broad and sometimes brutal campaigns to shut down the space for civil society activity, in some cases going so far as to criminalize independent human rights work.[44] Those abusive measures exclude people from participating in decision-making, from publicly opposing development projects that may harm their livelihoods, and from complaining about initiatives that are ineffective.

45. In its response to the questionnaire sent by the Independent Expert,[45] Human Rights Watch noted that international financial institutions have done little to prevent reprisals against critics of projects that they finance. A 2015 Human Rights Watch report on reprisals against critics of World Bank Group projects describes how people in Cambodia, India, Uganda, Uzbekistan and elsewhere have faced reprisals from governments and powerful companies in connection with their critique of Bank projects.[46]

46. An Uzbek human rights defender, in exile after raising the issue of forced labour in projects benefiting his Government's cotton sector, stated, "the World Bank has not taken any meaningful measures to ensure that independent human rights defenders like me can monitor for abuses linked to the projects they fund. Nor have Bank staff spoken out against the government's attacks on my colleagues and me".[47] The defender, whose case was raised with the Government of Uzbekistan by special procedure mandate holders, was allegedly detained and ill-treated in connection with his monitoring of the sector,[48] although the Government denies that.[49]

47. Human Rights Watch further documents the fact that in Azerbaijan, although the Extractive Industries Transparency Initiative[50] prevailed upon the Government to stop its crackdown on independent civil society, and despite the fact that the Bank endorsed that recommendation, project funding continued unabated.[51]

48. In addition, reprisals are routinely inflicted by enterprises on indigenous and other persons who oppose land-grabbing and pollution. One of the most notorious cases, which has been regularly raised by the special procedure mandate holders, is that of Berta Cáceres, who was killed in March 2016.[52] Two of those facing charges for her murder were employees of a company involved in the construction of the Agua Zarca dam, a project financed not by the Bank but by Dutch, Finnish and Central American banks. Although the Bank was not responsible for financing that project, it was hit by so much collateral outrage

[43] www.oecd.org/eco/surveys/Portugal-2017-OECD-economic-survey-overview.pdf, p. 25.

[44] See www.hrw.org/news/2016/07/14/defending-human-rights-development.

[45] See www.hrw.org/news/2017/04/25/human-rights-watch-submission-re-international-financial-institutions-and-human.

[46] Human Rights Watch, *At Your Own Risk: Reprisals against Critics of World Bank Group Projects*, (2015). Available from www.hrw.org/sites/default/files/report_pdf/worldbank0615_4up.pdf.

[47] See www.hrw.org/news/2016/07/14/defending-human-rights-development.

[48] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=19586.

[49] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=48790.

[50] See https://eiti.org/.

[51] Human Rights Watch, *Harassed, Imprisoned, Exiled: Azerbaijan's Continuing Crackdown on Government Critics, Lawyers, and Civil Society*, (2016). Available from www.hrw.org/sites/default/files/report_pdf/azerbaijan1016_web.pdf.

[52] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19805. See also public communications on the case, and government responses to them, available on the special procedures online communication database: https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

that it became necessary to issue a press release, in which Bank President Jim Yong Kim stated:

> We deplore the high level of fear and violence in Honduras. Berta Caceres was one of dozens of environmental activists who have been killed during the last six years. We urge the Government to address the deep-rooted land conflict in the region and bring this violence to an end. We know that strong environmental and social policies are key to achieving our goals of ending extreme poverty and boosting shared prosperity. This makes it all the more important that voices of people like Berta are not silenced.[53]

49. The United Nations High Commissioner for Human Rights also observed:

> Over the past year, at least six more campaigners have been killed in Honduras, including … José de los Santos Sevilla, the leader of the indigenous Tolupán people. Seven were killed in Colombia, Guatemala and Mexico during a single week in January, in connection with hydroelectric dams, mining and agribusiness projects … In addition to murder, the tools of repression include curbs on peaceful assembly, clampdowns on non-governmental organizations, attacks on independent media, state censorship, draconian antiterror laws, state-sponsored vilification, surveillance, arbitrary detention, torture and disappearances. In some countries, punitive laws and special law-enforcement agencies have been created specifically to protect investors' interests.[54]

F. Business bias

50. In 2002, the Bank started the Doing Business project,[55] with the mandate to rank countries on how their national regulations operate in favour of the "ease of doing business". From its inception, the project was criticized for promoting deregulation and the lowering of social and environmental standards. The Bank responded by removing the project's "employing workers" indicator from its scoring methodology, because it undermined labour standards and internationally recognized workers' rights.[56] The Oakland Institute has decried that and other flawed benchmarks, including the "paying taxes" indicator, which rewards the reduction of all types of corporate taxes, including environmental and social taxes levied to protect citizens and the planet.[57] The most recent Doing Business report actually notes as "good reforms" the abolition of environmental protection fees for corporations in Spain[58] and Viet Nam,[59] and praises the reduction of private sector taxes in a total of 28 countries.[60] Another example of incomprehensible interference in the necessary regulatory space of States is the bad score given to Tanzania as "punishment" for introducing a workers' compensation tariff to be paid by employers,[61] and the bad grade accorded to Malta for increasing employers' maximum social security contribution.[62]

51. Based on the Doing Business model, the Bank initiated the Enabling the Business of Agriculture project in 2013. It scores countries on a range of agriculture-related "good regulatory practices", including how governments facilitate the importation and distribution

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[53] See www.worldbank.org/en/topic/indigenouspeoples/brief/honduras-and-indigenous-people.
[54] See www.miamiherald.com/opinion/op-ed/article136884218.html.
[55] See www.doingbusiness.org/reports/global-reports/doing-business-2017.
[56] See www.doingbusiness.org/Methodology/Changes-to-the-Methodology, www.ituc-csi.org/ituc-calls-on-world-bank-to?lang=en, www.law.cornell.edu/uscode/text/22/262p%E2%80%939 and old.brettonwoodsproject.org/update/70/bwupdt70_ai.pdf.
[57] See www.oaklandinstitute.org/blog/world-bank%E2%80%99s-doing-business-rankings-relinquishing-sovereignty-good-grade.
[58] See www.doingbusiness.org/Reforms/Overview/Economy/spain.
[59] See www.doingbusiness.org/reforms/overview/economy/vietnam.
[60] See www.doingbusiness.org/reports/thematic-reports/paying-taxes.
[61] See www.doingbusiness.org/Reforms/Overview/Economy/tanzania.
[62] See www.doingbusiness.org/Reforms/Overview/Economy/malta.

of chemical fertilizers, implement intellectual property rights in agriculture,[63] enable private seed companies to increase profits, or facilitate the marketing of industrial seeds as opposed to seeds produced and exchanged by farmers, which are cheaper, more diverse and readily available in developing countries.

52. Those indexes are followed by investors and used by the Bank and bilateral donors to guide their funding. The Bank's Investment Climate department[64] provides advisory services to countries relying on the Doing Business scores. According to the Oakland Institute, "in many countries such interventions have assisted with the creation of 'one-stop shops' agencies to attract foreign direct investments, notably through offering cheap land leases, water access and tax breaks to corporations".[65] Whereas no scientific evidence[66] supports the selection of benchmarking topics by the Doing Business and Enabling the Business of Agriculture projects, or proves their effectiveness in fighting poverty, the Bank leverages such indexes to influence policy reforms around the world.

53. It is not without significance that over 280 civil society organizations, farmers' groups, unions and think tanks have endorsed the Oakland Institute's "Our Land Our Business" campaign, which denounces the Bank's imposition of normative, standardized sets of reforms.[67]

54. Ahead of the Bank's release of the 2017 "Enabling the Business of Agriculture" report,[68] 157 organizations and academics from around the world criticized "the Bank's scheme to hijack farmers' right to seeds, attack on food sovereignty and the environment".[69] The statement decries the fact that "the EBA dictates so-called 'good practices' to regulate agriculture and scores countries on how well they implement its prescriptions". In reality, however, as the Oakland Institute adds "the EBA has become the latest tool, to push pro-corporate agricultural policies, notably in the seed sector".

G. Immunity of the World Bank from litigation in domestic courts?

55. Hitherto the World Bank has been shielded from liability for human rights abuses by virtue of the Convention on the Privileges and Immunities of the Specialized Agencies.[70] However, as international law evolves, and in a similar way as Head of State immunity was loosened since the Pinochet arrest warrant in 1998,[71] the time has come for international financial institutions to be made accountable for harm resulting from loan practices and lack of due diligence.

56. Earth Rights International, a non-governmental advocacy group focused on the environment, has filed two claims against IFC in United States federal courts,[72] in which it

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[63] Alice Martin-Prével, "Down on the seed: the World Bank enables corporate takeover of seeds", (Oakland, California, Oakland Institute, 2017). Available from www.oaklandinstitute.org/sites/oaklandinstitute.org/files/down-on-the-seed.pdf.

[64] See www.worldbank.org/en/topic/competitiveness/brief/investment-climate.

[65] Letter to the Independent Expert dated 6 March 2017.

[66] See T. Manuel et al., "Independent panel review of the Doing Business report" (2013). Available from http://hendrikwolff.com/web/Doing%20business%20review%20panel%20report%20with%20signatures%20and%20bibliography.pdf and www.socialwatch.org/sites/default/files/Joint-statement-Our-Land-Our-Business.pdf.

[67] See www.oaklandinstitute.org/our-land-our-business, www.oaklandinstitute.org/world-bank-fuels-land-grabs-africa-through-shadowy-financial-sector-investments and www.oaklandinstitute.org/world-bank-sides-agribusinesses-against-farmers-indigenous-communities.

[68] See http://eba.worldbank.org/.

[69] See www.oaklandinstitute.org/civil-society-denounces-world-banks-scheme-hijack-farmers-rights-seeds.

[70] See August Reinsch, ed., *The Privileges and Immunities of International Organizations in Domestic Courts* (Oxford, Oxford University Press, 2013).

[71] See www.globalpolicy.org/component/content/article/163/29411.html.

[72] See www.earthrights.org/sites/default/files/documents/jam_v_ifc_-_appellant_reply_brief.pdf.

argues that absolute immunity is an anachronism.[71] The first, *Jam v. International Finance Corporation*, came before Washington D.C. district and circuit courts regarding the negative impacts of the Tata Mundra coal power plant in India.[72] In that case, IFC had provided $450 million for a power plant that the plaintiffs showed had degraded the environment and destroyed their livelihoods. While the courts have to date held that IFC enjoys absolute immunity,[73] the plaintiffs continue to challenge the decision and, at the time of writing of the present report, are requesting permission to present their arguments *en banc*, or before a full seating of all D.C. circuit court judges.[74]

57. In a second lawsuit, *Juana Doe v. IFC*, Earth Rights charges the Bank with responsibility for systematic human rights abuses committed by Dinant, a sprawling palm-oil plantation accused of engaging in bloody land-grabbing, intimidation and murder of indigenous persons in the Bajo Aguán region of Honduras.[75] The lawsuit alleges that since the mid-1990s, IFC, together with a financial intermediary, the IFC Asset Management Corporation, has invested millions of dollars in Honduran palm-oil companies. For nearly two decades, farmer cooperatives have challenged Dinant's claims to 16 palm-oil plantations, alleging that land was taken from the farmer cooperatives through fraud, coercion and actual or threatened violence. For its part, Earth Rights contends that IFC has "repeatedly and consistently provided critical funding to Dinant, knowing that Dinant was waging a campaign of violence, terror, and dispossession against farmers, and that their money would be used to aid the commission of gross human rights abuses". The claimants cite United States government sources to substantiate allegations that more than 100 farmers have been killed since 2009.[76] Furthermore, the suit relies in part on reports of the IFC internal watchdog, the Compliance Advisor Ombudsman (see sect. IV. D below and annex VII), who determined that the Bank had failed to spot or deliberately ignored the serious social, political and human rights context when implementing the project.

H. Credit-rating agencies

58. Every exercise of power, including economic power, must be subject to democratic controls, transparency and accountability. Many countries believe that inadequate or even deliberately false credit ratings and questionable rating processes were key contributors to the Asian financial crisis,[77] and more recently to the global financial crisis of 2007/08.[78] It is obvious that reforms are necessary, but it appears that the Bank is not yet tackling the impact of those institutions, whose ratings influence the Bank's decisions to grant or deny loans. It is the view of the Independent Expert that the Bank has a responsibility to test the reliability of the ratings by private sector agencies, or develop its own rating mechanisms and institutions[79] that can perform more objectively and effectively.[80]

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[71] See www.brettonwoodsproject.org/2016/04/ifc-claims-absolute-immunity-to-avoid-justice-but-will-it-hold-up-in-court/. See also European Court of Human Rights, *McElhinney v. Ireland* (application No. 31253/96) judgment of 21 November 2001 (dissenting opinion of Judge Loucaides).

[72] See http://d2zyt4oqqlal4w.cloudfront.net/sites/default/files/documents/ifc_tata_mundra_complaint.pdf.

[73] See http://www.allgov.com/india/news/top-stories/world-bank-cant-be-sued-rules-us-judge-on-denying-gujarati-villagers-lawsuit-160408?news=858610; http://law.justia.com/cases/federal/appellate-courts/cadc/16-7051/16-7051-2017-06-23.html.

[74] See www.earthrights.org/media/federal-appeals-court-rules-world-bank-group-cannot-be-sued-harming-communities-0.

[75] See www.earthrights.org/media/honduran-farmers-sue-world-bank-group-human-rights-violations.

[76] See https://systemicdisorder.wordpress.com/2017/03/22/world-bank-beyond-law/.

[77] Naomi Klein, *The Shock Doctrine* (London, Penguin Books, 2008), pp. 267-270 and 426.

[78] See http://unctad.org/en/Docs/osgdp20081_en.pdf.

[79] See http://blogs.worldbank.org/developmenttalk/health/should-world-bank-issue-credit-ratings.

[80] Jonathan Katz, Emanuel Salinas and Constantinos Stephanou, "Credit rating agencies". *Crisis Response*, Note No. 8 (Oct. 2009). Available from http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1303327122200/Note8.pdf. See also www.counterpunch.org/2017/06/07/muslims-are-very-strange-people/.

I. Ongoing research

59. Without a doubt, the World Bank has enormous potential for good and its staff of brilliant lawyers and economists is capable of devising policies and mechanisms to advance an agenda of economic growth cum human rights. Many of their studies recognize the key importance of human rights for development and formulate pertinent recommendations. However, these recommendations are not always put into effect.

60. Yet some products of World Bank researchers are not above criticism. The environmental and social justice organization Action for Solidarity Environment Equality and Diversity Europe[47] notes:

> The World Bank is the institution with one of the largest research budgets globally and has an rival in the field of development economics … A number of researchers and schools have questioned the reliability of the World Bank-commissioned research … Regarding the World Development Report (WDR) series, for example, Nicholas Stern, an Oxford professor in economics and former World Bank chief economist says that many of the numbers used by the Bank come from highly dubious sources, or have been constructed in ways which leaves one sceptical as to whether they can be helpfully applied.[48]

61. Since the Bank is aware of that criticism, there is hope that sooner rather than later the paradigm will change.

IV. Good practices

62. For several decades now, human rights have emerged as global priorities that the World Bank no longer ignores. In 2000, universal primary education became a Millennium Development Goal. In 2011, the Guiding Principles on Business and Human Rights were adopted.[49] In 2013, the Bank and the World Health Organization (WHO) committed to universal health coverage. In 2015, the Bank and ILO agreed on an integrated set of policies designed to ensure income security and support to all people across the life cycle, known as the Universal Social Protection Initiative.[50] At the same time, there is keen awareness about environmental issues at the Bank, and efforts are under way to address them, such as the adoption of the Climate Change Action Plan, aimed at helping States implement their obligations under the Paris Agreement reached at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.[51]

A. Environmental and Social Framework

63. In April 2016, after a four-year process, the World Bank Board approved a new Environmental and Social Framework to replace the existing safeguards.[52] The Independent Expert welcomes it as a basis upon which further developments can be advanced. For instance, the new policy on free, prior and informed consent sets a standard for companies and financial institutions, including the 72 export credit agencies and private banks that commit to the Equator Principles — a voluntary set of standards for identifying and managing social and environmental risk in project financing.[53] However, while the free, prior and informed consent policy in the new Environmental and Social Framework

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[47] See www.eurodad.net/pdfs/ASEED_Report_on_Worldbank_Conditionalities.pdf.

[48] See www.counterpunch.org/2017/05/24/world-bank-declares-itself-above-the-law/.

[49] See www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

[50] See www.ilo.org/global/topics/social-security/WCMS_378991/lang--en/index.htm and http://journals.sagepub.com/doi/pdf/10.1177/0020872815604814.

[51] See www.worldbank.org/en/news/feature/2016/04/07/world-bank-group-sets-new-course-to-help-countries-meet-urgent-climate-challenges.

[52] See www.bretton woodsproject.org/2016/09/world-bank-approves-new-diluted-safeguards/.

[53] See www.equator-principles.com/index.php/about-ep.

requires collective consent, it is also important to ensure that minority viewpoints are not overlooked.

64. Even strong critics of the World Bank have identified the potential of the new framework, particularly the requirement that IFC clients secure the free, prior and informed consent of indigenous communities prior to launching development activities. The President of Oxfam America observed that "IFC has been widely criticized for funding socially and environmentally risky projects that, in some cases, have had negative impacts on local communities, but IFC's efforts to improve its lending policies are a step in the right direction". The executive director of Oxfam Australia noted that "the revised IFC Sustainability Framework has the potential to help indigenous people get their fair share of natural resource wealth, particularly in emerging economies and conflict-prone countries".[90]

65. While much in the Environmental and Social Framework is welcome and imaginative lawyers will press for more transparency and accountability, civil society organizations have signalled some regrettable lacunae,[91] including the failure to make a binding commitment to the protection of human rights, especially when it comes to balancing competing rights and interests,[92] and the failure to commit to implement the core ILO Conventions.

66. Amnesty International pointed out, after contributing to the elaboration of the Environmental and Social Framework through several submissions, that "the Bank's refusal to address its own responsibility to respect human rights … means that it is lagging behind other International Financial Institutions and risks creating major reputational risks for the institution".[93] Amnesty urged the Bank "to ensure that the ESF allows for adequate human rights due diligence in order to identify, prevent and/or mitigate all potential negative impacts on human rights".[94]

67. Similarly, the NGO Forum on the Asian Development Bank (ADB) and Social Justice Connection cautioned that "gains have been largely undermined by the replacement of clear time-bound requirements with vague language, loopholes, flexible principles and reliance upon 'borrower system'".[95] The International Trade Union Confederation raised additional concerns over the absence of any reference to the ILO core conventions, which prohibit discrimination, child and forced labour, and require respect for freedom of association and the right to collective bargaining. The director of the Confederation's Washington office commented that "it should be an imperative for the Bank to ensure full consistency with the norms of the recognised international standard-setting bodies, including the ILO for labour".[96]

68. The Independent Expert considers that the Environmental and Social Framework should have explicitly required that all decisions on financing of projects be preceded by ex ante human rights, health and environmental impact assessments and that review mechanisms be devised to continue monitoring impacts for the duration of every project.

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[90] See www.oxfamamerica.org/press/aid-group-lauds-new-world-bank-policies-on-indigenous-rights-and-oil-and-mining-transparency/.

[91] See https://medium.com/@OxfamIFIs/four-quick-ways-to-fix-the-world-banks-social-and-environmental-protection-policies-9e63721fe414.

[92] See www.hrw.org/news/2017/04/25/human-rights-watch-submission-re-international-financial-institutions-and-human.

[93] See https://consultations.worldbank.org/content/submission-amnesty-international. See also the environmental and social safeguard policies of the African Development Bank, the United Nations Development Programme, the European Bank for Reconstruction and Development and the European Investment Bank, which all contain to differing extents a policy commitment to respect human rights in all their activities.

[94] See https://consultations.worldbank.org/content/submission-amnesty-international.

[95] *Bretton Woods Observer*, Autumn 2016, p. 8. Available from www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

[96] Ibid., p. 8. See also www.ciel.org/news/safeguard-policy-endangers-rights/ and www.ituc-csi.org/IMG/pdf/ess2-wb_ituc-critique_0914.pdf.

B. Inspection Panel

69. In 1993, the World Bank Executive Board established an Inspection Panel[97] as an independent complaints mechanism for persons who believe they have been, or are likely to be, harmed by a Bank-funded project. Over the past 24 years, the Panel has taken steps to maintain and improve accountability in the Bank and assist management to implement transformational projects. Composed of three members who respond directly to the Bank's Executive Board and remain independent of the Bank's management, the Panel's mission is to ensure accountability for the Bank's human rights and environmental obligations. All reports that are prepared by the Panel, including the initial complaint, are made public, but the identities of the complainants remain confidential, if they so wish.

70. The Inspection Panel has jurisdiction over projects financed by IBRD and IDA. Complaints about IFC and Multilateral Investment Guarantee Agency-supported projects are dealt with by the Office of the Compliance Advisor Ombudsman.[98]

71. Owing to its ability to conduct compliance investigations, the Inspection Panel has growing potential to redress injustices associated with the Bank's loans. The kind of dispute resolution provided can address core concerns of affected communities through negotiation and provide an opportunity to remedy abuses. In that regard, the Panel has investigated the alleged harm to people's livelihoods or environmental degradation resulting from infrastructure projects. The Panel has also considered projects affecting the rights of indigenous peoples, including land rights and sacred sites, projects affecting natural habitats, stress on water sources, adverse impacts on wetlands, deforestation, loss of biodiversity, or projects involving forced relocation, owing, for example, to the building of a dam, road, pipeline, landfill or power plant. The Panel's mandate, however, does not extend to issues relating to the procurement of goods or services, suspected fraud or corruption. The latter can be reported to the World Bank's Integrity Vice Presidency.[99]

72. In 2013, 20 years after the creation of the Inspection Panel, the Panel introduced its Pilot for Early Solutions programme as a second chance deferral process that entails putting an investigation on hold while allowing World Bank management time to resolve community complaints. Whereas the Pilot's second implementation in Paraguay seems to have worked well, experience elsewhere has shown that removal of a complaint from the Panel's transparent process may perpetuate the power imbalance, leaving the communities to negotiate directly with the same Bank staff and government officials responsible for the problems.[100] Thus, the Pilot programme should be reformed or terminated.

73. In response to the Human Rights Watch report on reprisals, several international financial institution accountability mechanisms are developing guidelines to prevent, monitor and respond to reprisals. For example, on 30 March 2016, the Inspection Panel published guidelines to reduce retaliation risks and respond to retaliation during the Panel process.[101] The Panel also collaborates with other complaints mechanisms, such as the European Investment Bank, with whom it completed a joint investigation in Kenya in 2015, adopting a mediation process. According to the Panel's 2015/2016 Annual Report,[102] the Panel carried out investigations in cases concerning Kenya and Uganda, and Kosovo,[103] and is engaged in pending cases in Armenia, Colombia, Mongolia and Uganda.

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[97] See www.inspectionpanel.org and the Panel's 2015/2016 Annual Report, available from http://ewebapps.worldbank.org/apps/ip/Pages/Annual-Reports-2016.aspx.

[98] See www.cao-ombudsman.org.

[99] See www.worldbank.org/en/about/unit/integrity-vice-presidency/report-an-allegation.

[100] *Bretton Woods Observer*, Autumn 2016, p. 5. Available from www.brettonwoodsproject.org/wp-content/uploads/2016/09/Observer_Sept_16_online.pdf.

[101] See http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2016%20Retaliation%20Guidelines.pdf.

[102] See http://ewebapps.worldbank.org/apps/ip/Pages/Annual-Reports-2016.aspx.

[103] All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999).

74. In addition to the guidelines, the Inspection Panel launched its Emerging Lessons Series in 2016, in which errors are acknowledged and solutions proposed.[154] The first in the series, published in April 2016, concerns involuntary resettlement,[155] the second concerns indigenous peoples (October 2016),[156] while a third focuses on environmental assessment (April 2017). Those are important tools for the Bank, governments, businesses and civil society.

75. In the opinion of the Independent Expert, who is a former Chief of Petitions at OHCHR, the Inspection Panel holds enormous promise for petitioners and should ensure continuous monitoring of World Bank projects. The downside of the procedure is that the Panel does not have the authority to enforce its recommendations. Nevertheless, that is a challenge also shared by United Nations treaty bodies like the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, both of which have complaints procedures.[157]

C. Taking preventive and corrective action

76. While ex ante impact assessments are necessary, a system of monitoring ongoing projects and the mechanism to suspend financing when human rights, health or environmental problems arise should be strengthened. For instance, in 2016, the Bank learned of widespread sexual abuse of workers in a $250 million bank-financed road construction project in Uganda. After unsuccessful attempts to correct the situation, financing was terminated. Yet ex post termination is insufficient. As World Bank President Jim Yong Kim stated:

> The multiple failures we've seen in this project — on the part of the World Bank, the government of Uganda and a government contractor — are unacceptable … It is our obligation to properly supervise all investment projects to ensure that the poor and vulnerable are protected in our work … I am committed to making sure we do everything in our power … first to fully review the circumstances of this project and then to quickly learn from our and others' failures so they do not happen again.[158]

77. An Inspection Panel report led to further action by the Bank and a 2017 Bank management response containing concrete proposals for reparation and lessons learned. It stated:

> Management has undertaken steps on two fronts — both project-level and system-wide, to address these issues. At the project level this has included steps to provide support for the victims of child abuse; to complete the compensation process; to address construction issues; to support capacity-building of the implementing agency; and support for response to gender-based violence.[159]

78. In 2014, the Bank had to reconsider a cotton industry project in Uzbekistan, when it learned of widespread forced labour, including child labour. As a senior international financial institutions researcher at Human Rights Watch noted, "the World Bank's proposals fall short in Uzbekistan, where forced labor in the cotton sector is uniquely government-orchestrated and supported by repressing independent groups…The World Bank needs to ensure that independent groups and journalists can monitor World Bank projects and report forced labor without fear of reprisal".[160]

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[154] See http://ewebapps.worldbank.org/apps/ip/Pages/Emerging-Lessons.aspx.

[155] See www.youtube.com/watch?v=D4Eumz4JcVE.

[156] See www.youtube.com/watch?v=-0cuIndwjEA.

[157] Jakob Th. Möller and Alfred de Zayas, *United Nations Human Rights Committee Case Law 1977-2008: A Handbook* (Kehl/Strasbourg, N.P. Engel Verlag, 2009).

[158] See www.theguardian.com/global-development/2016/jan/12/world-bank-cancels-ug... da-road-sexual-assault-claims.

[159] http://documents.worldbank.org/curated/en/256791492009915078/pdf/Uganda-TSDP-1st-Progress-Report-REV-for-SVPOP-April-4-final-fdg-CLEARED-04062017.pdf, p. 6.

[160] See www.hrw.org/news/2014/12/17/world-bank-investigate-uzbekistans-forced-labor.

D. Compliance Advisor Ombudsman

79. As mentioned above, the Office of the Compliance Advisor Ombudsman, created in 1991, is the independent accountability mechanism for IFC and the Multilateral Investment Guarantee Agency (MIGA). The Office of the Compliance Advisor Ombudsman is mandated "to serve as a fair, trusted, and effective independent accountability mechanism and to improve the environmental and social performance of IFC and MIGA". The Office of the Compliance Advisor Ombudsman chooses its investigations independently and reports directly to the President of the World Bank Group.

80. Among its recent investigations, the Office of the Compliance Advisor Ombudsman has made useful recommendations concerning the failure of the IFC to monitor the environmental and social performance of the Amalgamated Plantations Private Limited project in India. It concluded:

> CAO has made a number of noncompliance findings ... These cover IFC's pre-investment E&S (environmental and social) review as well as its supervision of the project ... IFC underestimated the E&S challenges associated with the project. Addressing these in accordance with IFC requirements will require the dedication of resources and relevant sectoral expertise beyond that which IFC has made available to the client to date ... In light of the noncompliance findings ... CAO will keep this investigation for monitoring ... until actions taken by IFC assure CAO that IFC is addressing its noncompliance findings.[111]

In another case, the Office of the Compliance Advisor Ombudsman audited IFC investment in a coal-fired power plant near the port town of Mundra in Gujarat, India. Complainants were fisher people living in the vicinity of the project who suffered environmental impacts of the plant operation. The audit concluded that:

> IFC's E&S review ... did not support the formation of a robust view as to whether the project could be expected to meet requirements of the Performance Standards over a reasonable period of time .... Weaknesses in IFC's E&S review process also meant that required opportunities to consider alternative project designs to avoid or minimize E&S impact were missed .... CAO has concerns that a framework for managing E&S impact that can be audited and monitored has yet to be established: the lacking elements being a consolidated statement of the requirements against which performance is monitored, using verifiable data ... Confidence among the IFC team in the client's E&S capacity and commitment, combined with a view that the project is performing well from an E&S perspective, have meant that IFC has not treated the Complainants' concerns as compliance issues. In accordance with the CAO Operational Guidelines, this audit will remain open and subject to CAO monitoring until CAO is assured that IFC has moved back into compliance with its E&S commitments.[112]

81. Other significant audits are summarized in annex VII to the present report. However, it must be stated that, as with the Inspection Panel, the Ombudsman does not have the authority to remedy abuses himself. As Human Rights Watch has observed, the Office of the Compliance Advisor Ombudsman investigates, but "it is the IFC that determines how to address the investigator's findings and often it chooses not to".[113]

V. A way forward

82. The Independent Expert welcomes the many positive measures already taken by the World Bank to address systemic and extrinsic problems and encourages the Board of

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[111] www.cao-ombudsman.org/cases/document-links/documents/CAOInvestigationReportofIFCinvestmentinAPPL_EN.PDF, p. 11.

[112] See www.cao-ombudsman.org/cases/document-links/documents/CAOAuditReportC-I-R6-Y12-F160.pdf, p. 5.

[113] See www.hrw.org/news/2017/02/21/world-banks-view-through-looking-glass.

Governors to strengthen World Bank governance and accountability through enhanced and facilitated access to justice when abuses occur. The Bank is in a position to give effect to its commitment to end poverty and help achieve the Sustainable Development Goals ahead of 2030. There is reason for optimism, since the Bank is conscious of the problems, has a formidable staff and benefits from the input of civil society organizations that do not cease producing excellent studies, diagnoses and pragmatic recommendations.

83. Bearing in mind that multilateral development banks, including the World Bank, receive large injections of public money, their biased approach in support of the private sector in developed and developing countries must be transformed into a human rights-based approach that carefully weighs the needs of the populations concerned.

84. The Independent Expert believes that a fundamental rethink is necessary and should result in an explicit definition of new priorities that puts the interests of billions of human beings who are deprived of the necessities of life ahead of those of foreign investors. The rules of the game must be changed so that loans are not granted on purely economic considerations and that the loan "conditionalities" henceforth aim at advancing the well-being of the populations concerned. The Independent Expert admires the impressive rhetoric and the beautiful publications of the World Bank and suggests that fewer resources should be devoted to public relations and the packaging of the product, and much more to risk-assessment, monitoring and implementation.

85. To that end, the Independent Expert proposes a change of paradigm that would require not only amending the Articles of Agreement of 1944 (adopted at Bretton Woods, New Hampshire, and last amended on 16 February 1989), but also clear directives from the Board of Governors. Pursuant to article V, section 8 (a) of the Articles of Agreement, the Bank should cooperate with international organizations having specialized responsibilities in related fields, including the Economic and Social Council and UNCTAD, which have proposed plans of action to advance development and human rights.[114]

86. At present, article IV, section 10, of the Articles of Agreement could be interpreted as an obstacle to that paradigm change. That obsolete provision stipulates that "the Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned". However, there is no reason to consider the promotion of human rights and environmental protection to fall under the scope of the prohibited "political activity" of the Bank. Indeed, all States parties to the World Bank Agreement are also United Nations members and all are bound by the Charter of the United Nations and numerous human rights treaties.

87. Of relevance is the Agreement between the United Nations and the International Bank for Reconstruction and Development, which came into force on 15 November 1947, and its Protocol, signed at New York on 15 April 1948, which came into force on 1 July 1948. Pursuant to article IV of the agreement, the United Nations and the Bank shall consult and exchange views on matters of mutual interest. Formal recommendations may be made after such consultation. Moreover, "the Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspects of reconstruction or development plans, programmes or projects". Article VIII specifically authorizes the Bank "to request advisory opinions of the International Court of Justice on any legal questions arising within the scope of the Bank's activities". Hence, it would be appropriate to make better use of the Articles of Agreement so as to effectively coordinate the work of the United Nations and the Bank in a manner that will advance implementation of United Nations human rights, development and environmental commitments. In particular, the Bank should request an advisory opinion on the overall priority of human rights treaties over commercial and other arrangements and how best to integrate customary human rights norms into the Bank's loan conditionalities.

[114] See World Bank, "Coherence, coordination and cooperation among multilateral organizations: 2009 progress report" (2009). Available from http://documents.worldbank.org/curated/en/589571468339611391/pdf/484000BR0SecM2101Official0Use0Only1.pdf.

88. Bearing in mind that the Bank's Articles of Agreement and the Agreement between the United Nations and the Bank were adopted prior to the adoption by the General Assembly of the Universal Declaration of Human Rights, and before the entry into force of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and many other human rights treaties, it is not unreasonable to expect that the human rights obligations of States members of the Bank should be advanced and not hindered by Bank policies. Article XIII of the Agreement between the United Nations and the Bank stipulates that the agreement is subject to revision and both parties are authorized to make supplementary agreements. That is a window of opportunity for the Bank to commit itself to certain key principles of the United Nations, including respect for the sovereignty of all States and non-interference in the domestic affairs of States. That requires acceptance of the fact that States, particularly developing countries, need flexibility and policy space to implement social policies aimed at ensuring food security, raising the standard of living, strengthening labour laws and ensuring access to water and education, which some privatization projects financed by the Bank have been known to undermine. Any amendment to the association agreement should strengthen the cooperation between the Bank and the United Nations, particularly with UNCTAD.

89. In addition to amending its Articles of Agreement, the World Bank must take full responsibility for the outcomes of its investments and implement preventive and corrective measures to ensure effective participation by all stakeholders and protection of human rights defenders on the ground. Procedurally, one of the challenges that must be addressed is the World Bank's undemocratic decision-making structure, which creates inequitable and sometimes counterproductive priority setting. Thus, the gentleman's agreement that Bank leadership will be held by citizens of certain States should be gradually phased out. Further, as other rapporteurs have noted, the underrepresented voices of the developing must be upgraded.

90. The Independent Expert agrees with the Director of Global Programs at the World Bank Institute, who said in 2006, that "it would be tantamount to a virtual 'fig leaf' for any institution to claim that much is being contributed to enhancing human rights in a country simply because development projects — such as on water or rural roads — are being funded".[115] If the Bank really has development at heart, it will change the conditionalities away from privatization, deregulation and lower corporate taxation and put the emphasis on reducing military expenditures, ensuring that progressive tax legislation is enacted and enforced, that tax havens are outlawed, and that a financial transactions tax is adopted and the revenues used to build "A World Free of Poverty" through international solidarity.

VI. Conclusions and recommendations

91. **The World Bank should:**

(a) **Embark on an inclusive process for drafting a new and separate human rights policy, which should embody a commitment to integrate human rights into its work by analysing human rights issues relevant to development in the context of country strategies, advise governments how to advance compliance with their human rights commitments, and identify human rights risks linked to its investments or advice;**

(b) **Adopt and implement the Universal Social Protection Initiative and the ILO Social Protection Floors Recommendation, 2012 (No. 202).[116] It should support the inclusion of enforceable labour provisions based on ILO standards, as well as the repeal of investor-State dispute settlement mechanisms that undermine governments' right to regulate (see A/HRC/30/44 and A/HRC/33/40);**

[115] Daniel Kaufmann, "Human rights, governance, and development: an empirical perspective", in *Development Outreach*, World Bank Institute, October 2006, p. 19. Available from http://siteresources.worldbank.org/EXTSITETOOLS/Resources/KaufmannDevtOutreach.pdf.

[116] See www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202.

(c) **Cease promoting labour market deregulation, including through its funding conditionalities, and instead help to reverse the rise in income inequality by supporting social dialogue and collective bargaining;**

(d) **Formulate tax policies and implement due diligence tools that go beyond asking simply for legal compliance from the companies to which it lends money;**

(e) **Hold IFC accountable for the development and implementation of a tax-responsible investment policy, which should be developed in consultation with civil society and include, at a minimum, due diligence beyond legal compliance to ensure that IFC cannot invest in companies with aggressive or abusive tax practices;**

(f) **Support initiatives to upgrade the Committee of Experts on International Cooperation in Tax Matters to an intergovernmental body that will prevent harmful international tax competition, negative spillovers from shifts of tax policies and illicit financial flows;**

(g) **Inform affected and prospectively affected communities about the Inspection Panel and the Compliance Advisor Ombudsman and how to approach them;**

(h) **Incorporate human rights chapters in its borrower country agreements, give policy advice to States on how best to promote fiscal responsibility and transparency in all sectors, including States' military expenditures;**

(i) **Address, as a matter of urgency, reprisals against critics of World Bank projects. Accountability mechanisms should systematically analyse the risk of reprisals and other security risks linked to every complaint received and discuss them with complainants; take all necessary measures to ensure confidentiality for complainants who ask that their identities be kept confidential; actively monitor for reprisals including by asking each of the complainants whether they or people closely associated with them have faced any problems, particularly following community visits; develop an early warning system to identify threats or other security issues particularly for those who have filed or are considering filing a complaint or are otherwise critical of a project; and work with World Bank management to respond to any reprisals linked to their cases to ensure that the security of complainants and others is restored;**

(j) **Issue operational procedures that involve Bank management in preparing and making public biannual reports tracking progress in implementing management action plans approved by the Board in response to Inspection Panel investigations;**

(k) **Create mechanisms to ensure that the reports and recommendations of the Inspection Panel and the Compliance Observance Advisor are publicized and implemented. Empower the Inspection Panel and the Compliance Advisor Ombudsman to reference human rights in their reports and recommendations, including by expressly referencing the recommendations of human rights treaty bodies and special procedure mandate holders;**

(l) **Be alert to any information about misuse of funds and ensure that human rights violations that occur in connection with the granting or use of loans are referred to the appropriate civil and penal tribunals and that cases of corruption do not enjoy impunity but are prosecuted in domestic courts;**

(m) **Advise governments about their responsibility to regulate the practices of businesses to ensure that they do not violate human rights and that they pay taxes in the jurisdictions where the projects operate;**

(n) **Intensify its cooperation with OHCHR, UNCTAD, ILO and WHO;**

(o) **Waive institutional immunity when gross violations of human rights have occurred.**

92. **IFC should immediately terminate all links with corporations and projects engaged in dodging taxes, and stop lending money to borrowers that directly or**

indirectly operate with tax havens and thereby deprive countries of their legitimate tax revenues, crucial to implement human rights obligations.

93. **The World Bank Board of Governors should issue a clear directive that the International Centre for Settlement of Investment Disputes must refrain from interfering with the ontological functions of the State, which are to regulate in the public interest, including through environmental, health, social and labour legislation. The International Centre for Settlement of Investment Disputes should not lend its services to litigation that puts those functions of the State into question. Rather the International Centre for Settlement of Investment Disputes should discover its vocation to serve in an advisory capacity.[117] To the extent that there is risk involved, the investor should take advantage of the Bank's Multilateral Investment Guarantee Agency and obtain risk insurance there (see A/HRC/30/44, A/HRC/33/40 and A/70/285).**

94. **Countries that benefit from World Bank financing should ensure that all loans they request and all foreign direct investment they receive are used in a manner that advances the enjoyment of human rights and does not result in the enrichment of a few at the expense of the many. In particular, monitoring mechanisms must be in place to ensure transparency and accountability, regular monitoring of business activity and easy recourse and remedy to persons adversely affected by World Bank-funded projects and IMF-funded government loans and "bail outs".**

95. **Donor countries should:**

(a) **Demand that their money be used only in ways that promote the common good;**

(b) **Deny funds unless and until there is an effective procedure for providing redress and reparation to victims of possible violations;**

(c) **Terminate financing of ongoing projects whenever it is clear that human rights violations are being committed, and rule out a return to direct budget support until there is significant improvement in the human rights situation;**

(d) **Recognize their responsibility by insisting on independent investigations, without the participation of governments suspected of corruption or other violations.**

96. **The media should objectively inform about abuses associated with loan agreements when they occur, particularly instances of evictions, destruction of the environment, child labour and corruption.**

97. **The International Consortium of Investigative Journalists should focus on early warning so as to help prevent abuses accompanying World Bank-financed projects and should ferret out cases of corruption, money-laundering and collusion with tax havens.**

98. **Civil society organizations should alert the public to the dangers of megaprojects and assist affected communities in presenting complaints to the World Bank Inspection Panel[118] and to the Compliance Advisor Ombudsman.[119]**

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[117] See Kinda Mohamadieh, Lean Ka-Min and Anna Bernando, *Investment Treaties: Views and Experiences from Developing Countries* (Geneva, South Centre, 2015). See also www.iisd.org/itn/2008/08/06/south-american-alternative-to-icsid-in-the-works-as-governments-create-an-energy-treaty/, http://old.brettonwoodsproject.org/art-561061, http://hsfnotes.com/publicinternationallaw/2012/01/19/venezuela-follows-bolivia-and-ecuador-with-plans-to-denounce-icsid-convention/, and Rafael Ramirez, *Nuestra Industria Petrolera es un Baluarte de Soberania* (Caracas, Petroleros de Venezuela, 2014).

[118] See http://ewebapps.worldbank.org/apps/ip/Pages/FileaRequest.aspx.

[119] See www.cao-ombudsman.org/howwework/filecomplaint/ and https://www.cao-grm.org/.

Annex I

Questionnaire from the Independent Expert on the promotion of a democratic and equitable international order to the World Bank

1. How does the World Bank promote the right to food, water, health and a safe and clean environment? How does the Bank consider the relationship between its general development model and human rights? In particular, how does the Bank consider mega infrastructure projects and significant private sector investment to impact human rights?

2. How does the Bank's new Environmental and Social Framework contribute to promoting and protecting human rights?

3. Concerning the organisation's institutional governance, how does the Bank ensure transparency in decision-making? What type of accountability exists to remedy any adverse effects on human rights resulting from projects or policies funded or promoted by the Bank? What recourse or remedy is provided for victims of alleged human rights violations? Is there any policy in place to prevent your financial assistance from being used to finance international crimes or to commit human rights violations?

4. How often are human rights, health and environment impact assessments conducted? Are ex ante impact assessments conducted ahead of loan agreements or development projects? Are ex post monitoring carried out?

5. How do you ensure the Bank projects do not involve a regression in the enjoyment of human rights? To what extent, and how, the Bank consider reducing economic inequality as part of their lending policies?

6. How do you ensure the participation and consultation with all stakeholders, including affected communities, in relation to decisions concerning new loan or development projects? What are the measures put in place by the Bank to work hand-in-hand with concerned governments to protect those voicing dissenting views? Is there any policy in place in case of opposition by affected communities or civil society organisations or others? Give examples of projects that have not been undertaken or have been abandoned when they have caused or are likely to cause irreparable harm, e.g. mass displacement of population.

7. How does the Bank see its responsibilities under international law and international human rights law? More concretely, how does the Bank intend to advance the realization of the Sustainable Development Goals and the COP21 commitments? To what extent does the Bank implement the recommendations of the ILO's World Social Protection Report? To what extent does the Bank act pursuant to General Assembly Resolution 69/319, Basic Principles on Sovereign Debt Restructuring Processes? Bearing in mind that "austerity measures" and "privatization" may cause considerable harm to the most vulnerable groups, what other measures does the Bank envisage so that human rights are not hindered but promoted? What do you do to alleviate the debt problem?

8. In the World Bank's responses to previous Special Procedure Mandate Holder reports, the Bank's spokesperson said that the 2015 report of the UN Special Rapporteur on human rights and extreme poverty (A/70/274) had fundamentally misrepresented the Bank's position on human rights. Could you provide a more detailed response to the report (which parts do you agree and disagree with and why?)? Has there been any internal follow-up on the publication of the report?

9. How does the Bank respond to the August 2016 report of the UN Independent Expert on Human Rights and foreign debt (A/71/305), in which he calls for the Bank to significantly broaden its definition of 'sustainability' under its Debt Sustainability Framework and take into consideration the need to provide fiscal space to guarantee and ensure governments' core human rights obligations?

10. How do you measure public-private partnership performance in human rights terms? What relationship exists between the Bank and governments that harbour tax havens and enterprises that use secrecy jurisdictions to avoid taxes?

11. How can the Bank collaborate with UNCTAD in implementing meaningful debt relief for poor countries and devising an international debt restructuring mechanism to resolve debt crises? How does the Bank ensure the social and environmental sustainability of their projects in cases of co-lending with other international financial institutions, including new international financial institutions such as the BRICS new development bank (NDB) and the Asian Infrastructure Investment Bank (AIIB), or in cases of financial intermediary lending?

12. How does the Bank envisage cooperation with the NDB and AIIB to strengthen the Purposes and Principles of the United Nations while advancing growth, stability and the right to development?

Annex II

Table of relevant reports

International Human Rights Mechanisms and the World Bank IMF	
Special Procedures	
Special Rapporteur on extreme poverty and human rights	
Report on the World Bank and human rights (A/70/274)	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/274 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20797&LangID=E (Statement)
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	
Missions to the World Bank and the International Monetary Fund in Washington, D.C. (20 October 2006) (A/HRC/7/11/Add.2)	http://www.ohchr.org/EN/Issues/Health/Pages/CountryVisits.aspx
Special Rapporteur on adequate housing	
Preliminary note on the mission to the World Bank Group (26 October to 1 November 2010) (A/HRC/16/42/Add.4	http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx
Report on the financialization of housing the right to adequate housing (A/HRC/34/51)	http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/AnnualReports.aspx http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20878&LangID=E (Statement)
Special Rapporteur on the human right to safe drinking water and sanitation	
Report on development cooperation and the realization of the human rights to water and sanitation (A/HRC/71/302)	http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/AnnualReports.aspx http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20878&LangID=E (Statement)
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights	
Report on Responsibility of international financial institutions (A/HRC/7/9)	http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx
Guiding Principles on Foreign Debt and Human Rights (A/HRC/20/23), endorsed by the HRC (A/HRC/RES/20/10	http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/20/23 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/20/10

Commentary on the guiding principles on foreign debt and human rights (A/HRC/25/51)	http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx
Report on structural adjustment and labour rights (A/HRC/34/57)	http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx

Working Group on the issue of human rights and transnational corporations and other business enterprises

Report on developments in the embedding of the Guiding Principles into global governance frameworks (A/67/285)	http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx
Report on improving policy coherence for inclusive and sustainable development (A/HRC/29/28)	http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx
Special Rapporteur on the rights to freedom of peaceful assembly and of association	
The exercise of the rights to freedom of peaceful assembly and of association in the context of multilateral institutions (A/69/365)	http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/AnnualReports.aspx
Special Rapporteur on the situation of human rights defenders	
Empowering environmental human rights defenders (A/71/281)	http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/281
Other Special Procedures actions	
SP Joint Letter from 12 December 2014	http://www.ohchr.org/Documents/Issues/IPoverty/WorldBank.pdf
Communication from the Special Rapporteur on the right to food and the Independent Expert on the effects of foreign debt and other related international financial obligations of States to the World Bank	https://spdb.ohchr.org/hrdb/22nd/public_-_AL_Other_(W.Bank)_10.08.12_(7.2012).pdf https://spdb.ohchr.org/hrdb/24th/public_-_OL_Other_28.03.13_(3.2013).pdf https://spdb.ohchr.org/hrdb/22nd/OTH_09.10.12_(7.2012).pdf (reply from the Bank)
Communication from the Independent Expert on the effects of foreign debt and other related international financial obligations of States and the Special Rapporteur on the rights of indigenous peoples to the World Bank	https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22932 https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=49127 (reply from the Bank)

Treaty Bodies

Committee on economic, cultural and social rights	
General Comment No. 14 The right to the highest attainable standard of health	http://apps.who.int/disasters/repo/13849_files/o/UN_human_rights.htm *(Para. 39. States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions.)*
OHCHR	
Comments and recommendations of UN OHCHR in relation to the draft Environmental and Social Framework (2016)	https://consultations.worldbank.org/Data/hub/files/20160315_memorandum_ohchr_esf_with_annexes.pdf
Key messages on Human Rights and Financing for Development	http://www.ohchr.org/Documents/Issues/MDGs/Post2015HRAndFinancingForDevelopment.pdf
Report on austerity measures and economic and social rights	http://www.ohchr.org/Documents/Issues/DevelopmentRightsCrisis/E-2013-82_en.pdf
Others	
UN International Law Commission	
Draft articles on the responsibility of international organizations, with commentaries, 2011 UN.Doc. A/66/10	http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf
OAS	
Public Hearing: Human rights violations and responsibility of international financial institutions	http://www.ciel.org/Publications/IFIs_HR_Analysis_28Feb07.pdf

Annex III

Tilburg-GLOTHRO Guiding Principles on the World Bank Group, the IMF and Human Rights

Underlying Notions and Observations

Human Rights Obligations for International Financial Institutions (IFIs)

1. The Universal Declaration of Human Rights of 1948 is a 'common standard of achievement for all peoples and all nations' (Preamble of the Declaration). At the beginning of the new Millennium, the Declaration goes far beyond being merely a moral or political obligation, as large parts of it belong to international customary law, while some rights have developed into jus cogens standards.

2. As a follow-up to the 1948 Declaration, a large number of human rights conventions have been adopted by the United Nations, including its Specialised Agencies, and by regional organisations. Regional and international supervisory bodies and national courts have established a serious and extensive body of case law and jurisprudence.

3. International human rights law includes civil, cultural, economic, political and social rights, as well as the right to development. These rights are, each in their own way, relevant in the struggle against poverty as well as for other activities performed by World Bank and IMF, and, mutatis mutandis, other IFIs.

4. The traditional division between obligations of States not to interfere with civil and political rights on the one hand, and obligations of States to actively provide for the realisation of economic, social and cultural rights on the other hand, is no longer reflecting the reality in the implementation of human rights. Instead, the division of obligations of States into three levels: the obligation to respect, the obligation to protect and the obligation to fulfil, has gained widespread acceptance in the international human rights community.

5. The responsibility for implementing human rights is universal and concerns all — state and non-state — actors whose activities may affect people's lives. The primary responsibilities and obligations in the field of domestic human rights enjoyment, however, remain with the State: States cannot 'delegate' human rights obligations to, for instance, international institutions and relieve themselves of these obligations. As international legal persons, the World Bank and the IMF have international legal obligations to take full responsibility for human rights respect in situations where the institutions' own projects, policies or programmes negatively impact or undermine the enjoyment of human rights.

6. The two IFIs are also Specialised Agencies, having entered into Relationship Agreements with the United Nations in accordance with UN Charter Article 63. This is another indication of their international legal personality separate from their members, which carries with it rights and obligations according to international law. According to the Relationship Agreements the organisations are, and are required to function as, independent international organisations. It provides an organisational independence from the UN, not from international law.

7. The World Bank and the IMF are governed by their member States. When representatives of member States determine the policies of the two IFIs, they are bound by their States' international obligations, including those arising from international human rights law. This includes an obligation on those States in a position to assist, to provide international assistance and co-operation. The obligation of international assistance and co-operation includes the duty to work actively towards an equitable financial investment and multilateral trading system that is conducive to the reduction and eradication of poverty and the full realisation of all human rights.

8. As members of the UN the member States of the two IFI's have legally committed themselves to uphold the purposes and principles of the UN Charter, including the

promotion of respect for human rights. According to Article 103 of the UN Charter, the obligations of States under the Charter, including obligations in the field of human rights, take primacy over other international obligations.

Linking Legal Obligations in the Field of Human Rights to Economic and Political Realities

9. Markets are to ensure economic effectiveness in processes of production, distribution and consumption of goods and services. From a macro-economic perspective they may contribute to generally improved living conditions. To ensure, however, that outcomes of economic processes also conform to standards of social justice and meet obligations in regard to the daily livelihoods of poor people, human rights standards must be an integral part of decision-making by actors in market-oriented environments.

10. While most governments have ratified human rights conventions, the status of human rights in many societies — in all its dimensions — remains precarious at best. The implementation of rights is often impeded by weak legal systems, particularly relating to the poor, the powerless, minorities and indigenous peoples as well as to the realisation of the right to a clean environment. The negative experience with capacity building and institutional development is a major problem for any discussion on the mainstreaming of human rights in development institutions.

11. Practice often shows that one part of government does not necessarily know what another part is doing, even if both parts are working in the same field. One segment of the government might even be resistant to what another governmental agency is doing. Often, governments do not ensure that all relevant departments are familiar with international human rights norms that bear upon policy-making processes. This is a problem in all States in the world, albeit in varying degrees.

12. When the UN was created, it was endowed, through its Charter, with a mandate to deal with problems of international co-operation, in particular economic and social co-operation. Today, much of the economic policy dialogue has shifted to the World Bank and the IMF (and to the WTO, which is not addressed in these Guiding Principles).

13. The World Bank and the IMF currently also address global concerns that are within the expertise of different UN organs and Specialised Agencies, inter alia, security, environment, social policy, gender, development, poverty reduction, debt relief, health and educational issues. They exert significant influence on these issues either directly, by setting actual policies, or indirectly, by prescribing economic policy directives.

14. In practice, there is a striking asymmetry of power and influences between the UN and both IFIs. The World Bank and the IMF have considerable resources available to fulfil their mandates and they dispose of powerful means to have their decisions enforced. The UN on the other hand has only a limited budget, apart maybe from the UN Security Council, which is insufficient to effectively perform the wide spectrum of functions it is expected to fulfil.

15. There is a troubling lack of dialogue and co-ordination between the UN and the two IFIs. The World Bank and the IMF, albeit UN Specialised Agencies, exhibit a large degree of independence from the UN. Based on their interpretation of the Relationship Agreements with the UN, the IFIs have contrived to distance themselves from many UN resolutions and recommendations that reflect the broad wishes of the international community.

16. Although the World Bank and the IMF increasingly adopt partnerships with other organisations, including those within the UN system, these partnerships often mean that the IFIs set the policy directions while the respective partner organisation is tasked with the implementation. Partnership in the design of policy directions is rare.

Evaluation and Redress of Adverse Human Rights Impacts

17. Rights and obligations demand accountability, while it is up to the duty-holders to determine which accountability mechanisms are most appropriate in particular cases. In any case, however, these mechanisms must be accessible, transparent and effective.

18. A human rights impact assessment can be done ex ante, i.e. in the stage of decision-making, or ex post, i.e. when projects have evolved or have come to an end.

19. Strategies to supervise the implementation of economic, social and cultural rights should not be limited to the monitoring of violations. In relation to economic, social and cultural rights, the poor's access to these rights is one of the core issues. In particular, firm links need to be established between legal/constitutional reform and social policy. This includes the incorporation of international economic, social and cultural rights in national law, accompanied by a change in legal, political and social systems, structures and institutions.

20. The monitoring and assessment of human rights violations can normally be done on a case by case basis. However, in the framework of assessing the human rights impact of World Bank projects and IMF programmes, a case by case approach might work for individual projects and country strategies, but not for the evaluation of broad and general policies that are problematic from a human rights point of view.

21. The effectiveness of the World Bank Inspection Panel as a human rights accountability mechanism is limited by its inability to invoke specifically human rights law, its lack of decision-making power, the absence of a role for the petitioners in the Inspection Panel procedure itself, and the limited human rights expertise of the Panel.

22. The IMF Independent Evaluation Office's mandate allows flexibility in possible evaluation topics and consultations with informed and interested parties outside. The key lacuna in the Office's terms of reference, however, is that affected or interested parties cannot challenge IMF programs if flawed. For that reason, there is still a need to establish a complaint office.

Guiding Principles

Human Rights Obligations for International Financial Institutions

23. While joint statements by the World Bank and the IMF increasingly recognise that macroeconomic and financial aspects cannot be considered separate from the structural, social and human aspects of development, their macro-economic policy should take into account its impact on human development objectives, including human rights.

24. The World Bank and the IMF should integrate human rights considerations into all aspects of their operations and internal functioning. Both financial 252 institutions should ensure that prevention of human rights violations is given high priority in their processes, policies, financed projects and in the implementation of various programs and strategies. If violations do occur in the course of these operations, then measures for mitigating the impact thereof and mechanisms of accountability and redress should be put into place.

25. The IMF Articles of Agreement acknowledge the need to respect domestic social and political policies of members. Such policies include international commitments to human rights. Neither the IMF nor the World Bank should impede the Borrower from honouring such legal obligations, or agree to measures depriving individuals of their rights under domestic and international law.

26. In concluding agreements with their members, the IFIs shall respect the obligations of the members according to Article 103 of the UN Charter, including giving priority to respect for human rights.

27. When determining the policies, programmes and projects of the World Bank and the IMF, member States must comply with their obligations under international human rights law, including the duty to engage in international assistance and co-operation. Moreover, when member States decide upon policies, programmes and projects that impact upon a State, they must take into account and respect the relevant national and international human rights laws that apply to that State. Member States should not agree to measures that will impede their ability to comply with their national and international human rights obligations.

28. For reasons of operationalisation, general human rights obligations for the World Bank and the IMF should be specified in a practical and accessible instrument by which the two IFIs are to be guided in all their decisions and on the basis of which they can be held accountable.

29. The World Bank Articles of Agreement need to be interpreted in the light of the current definition of development, which includes respect for human rights.

30. The Bank's operational policies are an appropriate instrument for assisting staff in ensuring that Bank-financed projects do not result in human rights violations. The following clause should be included in the operational policies of the World Bank: 'The World Bank shall not finance projects that contravene applicable international human rights law.' A clause to the same effect should be included in loan agreements concluded between the Bank and member States. The loan agreements are international treaties, which are binding both on the international organisations and the State concerned, and are governed by international law. The Bank should ensure compliance with the human rights clause during implementation.

31. The following clause should be included in the policies of the IMF: 'The IMF shall not enter into financial agreements that contravene applicable international human rights law.' A clause to the same effect should be included in programme support agreements between the IMF and States. The IMF should ensure compliance with the human rights clause during implementation of its programmes.

Linking Legal Obligations in the Field of Human Rights to Political and Economic Realities

32. Concrete policies, programmes, projects and actions activate specific duties, including in particular with regard to people whose lives are affected by the decisions taken. In order to establish the nature and implications of such concrete duties, decision-making by the World Bank and the IMF should be open and transparent, so that the interests of all stakeholders be represented and acknowledged in the light of applicable international human rights standards.

33. The World Bank and the IMF are required to ensure that people who are affected by their projects and strategies as well as civil society organisations are given the opportunity to participate actively in taking the decisions that affect them. This participation should be facilitated and conducted in the light of applicable international human rights standards — including the principle of non-discrimination and the right to information, the right to be consulted, and the right to free and informed consent — and take into account marginalised groups and peoples, including indigenous peoples, with respect for their right to (internal) self-determination.

34. In adopting partnerships, the World Bank and the IMF need to pursue the equity of goals of other solid and financial partners and to take on board the goals and instruments of partner organisations, including those within the UN system, and to see how they relate to the Bank's and the IMF's policy orientations and decision-making processes. This would not only benefit all constituents of the World Bank and the IMF but also enrich the policy agenda of other actors. The World Bank and the IMF need to search systematically for common ground and co-operation so as to increase the impact of their projects and programmes on poverty reduction.

Evaluation and Redress of Human Rights Impacts

35. The World Bank and the IMF should ensure that all accountability mechanisms are easily accessible for affected individuals and groups, inter alia through supporting capacity building initiatives that would enable individuals and groups to engage more effectively with these institutions.

36. The World Bank and the IMF should support initiatives in which co-operation between human rights NGOs and development NGOs is strengthened in order to maximise their effective engagement with the IFIs and the communities affected by World Bank- and

IMF-funded activities. It enables both IFIs to ensure the development of policies that are consistent with the rights and needs of these communities.

37. Given the wealth of information and data held by the World Bank and the IMF on issues closely bearing upon the implementation of human rights within States, both IFIs are urged to make this material available, on a regular basis, to relevant bodies within the UN human rights system, such as the UN Committee on Economic, Social and Cultural Rights. The IFIs should also make their staff available to discuss such material with the relevant UN human rights organs.

38. The World Bank and the IMF should evaluate the human rights impact of their projects and policies, ex ante as well as ex post, through the collection of disaggregated data according to, inter alia, gender, race, religion, ethnicity, age and poverty level.

39. The insertion of a human rights clause in the World Bank operational policies will enable the World Bank Inspection Panel to include international human rights law in its review of the standards against which Bank actions are tested.

40. As a complement to the Inspection Panel procedure, the Bank should agree to engage in international arbitration for settling disputes with private parties. Affected parties might claim that the Bank with its operational policies has adversely affected their human rights.

41. Human rights considerations should be integrated in the IMF's Independent Evaluation Office's terms of reference, mandate and functioning. The Office, as well as the World Bank Inspection Panel, should build up human rights capacity and resources, including staff training.

42. The IMF should review its accountability mechanisms, in order to provide for settlement of complaints, brought by affected individuals and communities, challenging IMF programs and policies.

Annex IV

Global Unions "IFI Actions must contribute to building a fair and sustainable global economy" Statement by Global Unions to the 2017 Spring meetings of the IMF and World Bank

Washington, 21-23 April 2017

Introduction

1. A slight uptick in global growth prospects announced in the international financial institutions' latest economic forecasts does not signal an improvement in the situation of working people. Global Unions[1] cite data showing wage stagnation and weak employment growth in much of the world, and urge the IFIs to focus on the creation of quality jobs, achieving the transition to a low-carbon future and reducing inequality. The trade union movement is concerned by the growth of right-wing nationalism in many countries, due in part to a lack of confidence in the global economic system. The IFIs should join those calling for fairer rules in international trade and investment agreements, not push for liberalization that further strengthens investors' rights at the expense of everyone else.

2. Global Unions' statement puts forward detailed recommendations for IFI action to make progress on gender equality and a just transition to a sustainable economy. The statement also recommends specific measures that the IMF and World Bank should take in order to contribute to reductions in income and wealth inequality. While welcoming the World Bank's first-time adoption in 2016 of a labour standards lending requirement, Global Unions urge the Bank to fulfil commitments to cooperate with trade unions and the ILO for its implementation. Joint work with other development banks that have several years' experience in applying labour safeguards is also suggested.

IFI forecasts do not announce improvements for working people

3. In updates to their global economic growth forecasts published at the beginning of the year, both the IMF and World Bank predict slightly higher growth for 2017 and 2018 due in large part to the impact on exporters of firmer prices for oil and some other commodities.

4. The IMF also factored in expectations of fiscal stimulus applied by the US, but both IFIs emphasized that the high degree of current policy uncertainty has increased "downside risks". Signs of tighter credit conditions and reduced investment in emerging and developing economies, along with political instability and uncertainty in several countries, could further undermine the positive trends suggested in the latest IFI forecasts.

5. It should be noted that the IFIs' growth predictions have been widely off the mark in recent years because of the failure to correctly assess the impacts of austerity policies, continued high unemployment and under-employment, and stagnant wages. At the beginning of 2016, the Fund and the Bank also predicted a growth uptick for that year. Instead, 2016 registered the slowest rate of global economic growth since the Great Recession year 2009.

6. Even if the slightly higher growth for 2017 predicted by the IFIs materializes, it will not significantly improve the situation of working people. Recent reports published by the International Labour Organization identify a steady deceleration of wage growth since 2012 in developing and emerging countries, and forecast a modest increase in the global unemployment rate in 2017 due to a deterioration in emerging economies (Global Wage

[1] The Global Unions group is made up of the International Trade Union Confederation (ITUC), which has 181 million members in 163 countries; the Global Union Federations (GUFs), which represent their respective sectors at the international trade union level (BWI, EI, IAEA, IFJ, IndutriALL, ITF, IUF, PSI and UNI); and the Trade Union Advisory Committee (TUAC) to the OECD.

Report 2016/17; World Employment and Social Outlook — Trends 2017). The ILO further estimates that there will be only slight improvements for those at the bottom of the income scale in 2017. Close to 43 per cent of workers worldwide will remain in a situation of vulnerable employment and almost 29 per cent in "working poverty". The fair and effective integration of migrants and refugees into labour markets is also a key concern, as these populations are often vulnerable to unemployment, low quality jobs and social exclusion.

7. The IFIs currently predict that the economies of emerging and developing countries will grow more than twice as fast as developed countries, which as a whole have grown at an average annual rate of only 1.6 per cent since 2010. Indications of increased joblessness and slowing wages in emerging economies identified by the ILO will undermine the IFIs' predictions of improved growth prospects for the entire global economy in 2017 and 2018.

8. Some IFI forecasts note that political developments over the past year will further complicate attainment of a sustainable growth path for the global economy. The rise of right-wing nationalism in several countries is of great concern to trade unions around the world, but the response of policymakers should not be to ignore the growing lack of confidence in the global economic system. For years, some international institutions including the IFIs have shrugged off the adjustment costs from trade liberalization and the losses suffered by a significant number of working people from trade and investment agreements. Further liberalization without fairer rules for all is not the way forward. As a recent Trade Union Statement to G20 Finance Ministers [2] noted, policymakers must correctly identify the direction of causality between trade and growth when they formulate policy responses:

> "The recent trend of trade slowing down is mainly caused by weak domestic demand (prompted by austerity, internal devaluation, debt deleveraging), not by a surge in protectionism. Ignoring this causality by trying to push for more trade runs the risk of falling into the 'competitiveness' trap where economies depress wages in order to try to export themselves out of the crisis, which ends up deepening the global lack of demand, further slowing down trade dynamics."

9. The IMF and World Bank should endorse a rebalancing of investors' rights and obligations in trade and investment agreements by supporting the inclusion of enforceable labour provisions based on ILO standards, as well as the repeal of investor-state dispute settlement mechanisms that undermine governments' right to regulate. To respond to the global lack of aggregate demand, growing inequality and the challenge of climate change, Global Unions urge the IFIs to support an extensive programme of public investment in energy efficient infrastructure and quality public services, and coordinated wage increases.

Promote gender equality through decent work and public investment in social infrastructure

10. Gender equality and female labour force participation efforts must deliver lasting economic empowerment for women. Working women around the world are often concentrated in precarious, low-wage jobs in the service sector, domestic work and the bottom end of global value chains, and women are more likely than men to have informal jobs. Meaningful progress on decent work and transition from the informal to formal economy will be a particular boon for women and drive inclusive development. The global economy currently functions through the underpaid and unpaid work of women. Increasing female labour force participation in isolation from a decent work agenda will fail to adequately address gender equality.

11. Progress on gender equality is undermined by policy advice and conditionality involving austerity for social programmes, public sector retrenchments, labour market deregulation, cutbacks in public services and dismantling of collective bargaining systems. In Greece, labour market reforms and austerity applied at the behest of the IMF and EU creditors disproportionately affected women through job losses in the majority-female public sector, increased precarious work and a spike in gender-based firings. Women suffer

[2] TUAC, March 2017 (http://www.tuac.org/en/public/e-docs/00/00/13/2C/document_doc.phtml).

most when social programmes are cut and care reverts to unpaid labour. Global Unions commend the IMF for supporting increased female labour force participation, for example in the 2016 Egypt programme, but caution that the failed model of austerity now being applied in the Middle East and North Africa will harm women and risks outweighing progress in participation.

12. Global Unions urge the IFIs to support public investment in social infrastructure, including health, education and care systems. Investing in the care economy in particular, would help to create jobs, raise productivity, reduce the burden of unpaid labour and catalyse economic growth.[3] Responsible public investment is needed in this sector along with improved job quality for care workers in order to improve the attractiveness of jobs in the sector, address shortages in the supply of care services and ensure the accessibility and quality of these services. Expansion of social infrastructure will create new physical infrastructure projects and procurement that offer further economic benefits. Global Unions support investments in both physical and social infrastructure, and call on the IFIs to promote them in tandem.

13. Gender budgeting with the participation of social partners will also help achieve gender equality. In Iceland, where 86 per cent of the workforce is unionized, tripartite dialogue led to adoption of the Equal Pay Standard, a trailblazing initiative and global example. The core labour standards of collective bargaining and freedom of association give women effective tools to create safe workplaces free from violence, harassment, discrimination and health and safety risks. The full realization of these rights is central to gender equality.

Financing a just transition to a sustainable global economy

14. A zero-carbon, zero-poverty future is possible through a coherent response to the social, economic and climate challenges facing our world. The influence and financial resources of the IFIs are necessary to reach this future through a just and equitable transition. The conversion to a sustainable economy can be a net creator of jobs, but the substantial economic changes involved could leave workers behind and create further inequality. The danger of unemployment, forced migration and rising energy costs loom over working people.

15. Sustainable infrastructure built in the coming years can form the backbone of a sustainable global economy involving better transport, agriculture, industry and more. Public investment in essential services — such as housing, electricity, sanitation and water — is also essential in order to enable individuals to fully participate in society as well as the labour market. Major climate change mitigation projects are also necessary. Global Unions urge the World Bank to take a leadership role in ensuring that global infrastructure is sustainably built, energy-efficient and creates quality jobs. The IMF and World Bank can assist countries in policy and fiscal planning for a just transition and the achievement of the Nationally Defined Commitments under the UN Framework Convention on Climate Change. Additionally, the IFIs can follow up on their research on carbon taxes as well as discussions held with trade unions and other parties and move toward implementation. Equitable carbon taxes can fund a just transition and investments in infrastructure.

16. The shocks of climate change, including rising sea levels and temperature changes, will increasingly displace people from their jobs and homes. This problem will particularly affect lower-income people in developing countries. Adequate, universal social protection is needed to help working people survive and adjust. Whenever possible, plans should be made to directly help fossil fuel workers transition to new jobs. This is especially important for communities with low levels of economic diversification that rely on a single facility or sector, where retooling facilities to sustainable activities is one way to create a direct path to jobs. Social dialogue is crucial to planning these changes at the local, national and international level. Global Unions ask the IFIs to support dialogue and the negotiation of binding agreements for sustainable economic transformation.

[3] ITUC, *Investing in the Care Economy*, January 2017 and March 2016 (https://www.ituc-csi.org/investing-in-the-care-economy).

Reduction of inequality: Actions should follow words

17. The IFIs' increased attention to the negative impacts of income and wealth inequality and its causes is a welcome development. The World Bank has emphasized that measures to make income distribution more equal are a necessary condition for attainment of Sustainable Development Goal 1.1 on eradicating extreme poverty, as well as SDG 10.1 on boosting the bottom 40 per cent (Poverty and Shared Prosperity, October 2016). The IMF has published several research papers showing that countries with lower inequality have higher and more durable growth; that fiscal policies have become less redistributive in most countries; and that weaker labour market regulations and institutions, reflected in declining trade union density and collective bargaining coverage, are the main drivers of increased inequality in many countries.

18. However, action in lending programmes or country-level policy advice has been slow to catch up to the IFIs' discourse and research on the need to reduce inequality. Many IMF programmes or policy recommendations continue to support measures that weaken minimum wages, employment protection regulations or collective bargaining institutions. For example, the IMF has encouraged many countries to substantially weaken or dismantle national or sector-level collective bargaining, despite the role that coordinated collective bargaining systems have played in achieving more equal income distribution. In February 2017, the UN's Independent Expert on the effects of foreign debt and other related international financial obligations submitted a report to the Human Rights Council, which documented numerous cases of the IMF promoting austerity-related labour market reforms that erode workers' rights.[4] The report found little evidence that the deregulatory measures, put forward on the pretext of preventing or resolving debt crisis, contributed to economic recovery; but they did contribute to increased inequality.

19. The Fund's advice or loan conditions in the area of social policy have also had potentially troubling impacts on inequality. Some IMF programmes include a "social spending floor" as a Quantitative Indicative Target, but these are purely symbolic since a failure to meet minimum spending targets has no effect on loan disbursements. The main object of IMF involvement in social programme reforms is to control their fiscal cost, not to improve their adequacy or coverage. In some countries, for example in Egypt, the Fund and the Bank have supported the extreme targeting of social benefits over universal approaches: for example by replacing universal consumer subsidies with severely means-tested benefits. The "proxy means test" mechanism often used has been shown to typically exclude 50 per cent or more of those that should be eligible by virtue of income level, according to research published by the ILO.[5] Social protection reform measures promoted by the IFIs that leave a majority of lowest-income people without any assistance are incompatible with inequality reduction and shared prosperity goals.

20. To its credit, the World Bank has in recent years expressed support for universal healthcare coverage and universal social protection. In 2016, it launched a joint programme with the ILO for increasing the number of countries with universal protection. The Bank has endorsed these initiatives in conformity with its support for the SDGs, specifically targets 1.3 on social protection for all and 3.8 on universal health coverage. The Bank should ensure that its country programmes deliver on the promise of protection for all by helping establish comprehensive systems based, for example, on the social protection floor concept developed at the ILO. The IMF should also support this approach, following up on country-level research work it has already been involved in for identifying fiscal space for social protection floors.

21. Additionally, the World Bank has supported the SDG targets linked to Goal 4 on ensuring inclusive and quality education for all, which is another key instrument for

[4] United Nations Human Rights Council, A/HRC/34/57, 27 December 2016 (http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/57).

[5] Kidd, Gelders and Bailey-Athias, *Exclusion by design: An assessment of the effectiveness of the proxy means test poverty targeting mechanism*, (http://www.developmentpathways.co.uk/resources/wp-content/uploads/2017/03/Exclusion-by-design-An-assessment-of-the-effectiveness-of-the-proxy-means-test-poverty-targeting-mechanism-.pdf).

achieving more equal distribution of income as well as contributing to countries' growth of productivity and access to prosperity. The Bank's 2018 World Development Report, on the theme of "Education for Development", provides an opportunity for the institution to describe in detail the strategies it needs to develop to support education targets, starting with SDG target 4.1: "By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes". The Bank should make certain that all the schooling initiatives it supports are consistent with and supportive of the commitment to free, equitable and quality education.

Cooperation for implementing World Bank's new labour safeguard

22. If the World Bank's announced plans are respected, in 2018 it will join several other multilateral development banks (MDBs) that, over the past several years, have implemented comprehensive labour standards lending requirements or safeguards. "Environmental and Social Standard 2: Labour and Working Conditions" (ESS 2) is part of the Bank's new Environmental and Social Framework, adopted in August 2016. ESS 2 provides for basic occupational health and safety requirements, obligations to provide information to workers and a requirement to respect certain fundamental workers' rights.

23. The World Bank's introduction of a labour safeguard is an important development, but the effectiveness may be impaired by the fact that in some aspects its version is weaker than those of the other MDBs. Principal among the weaknesses is the absence of any reference to the core labour standards (CLS) conventions of the ILO, which prohibit discrimination, child labour and forced labour, and require respect for freedom of association and the right to collective bargaining. Whereas ESS 2 stipulates that the first three practices will not be tolerated in Bank-funded projects whether or not they are prohibited in the client country's law, it requires respect of freedom of association only "in a manner consistent with national law". This proviso is at odds with the requirements of the other MDBs and also contrary to the universal nature of the CLS as established by the ILO since 1998.

24. In order to avoid that weaknesses or ambiguities in ESS 2 lead to tolerance of unacceptable labour practices or denial of workers' rights in Bank-financed activities, it will be imperative that the Bank cooperates fully with parties knowledgeable about the labour conditions in its projects and programmes, notably the ILO and trade unions. The Bank should move forward with cooperation as it develops staff directives, training material, monitoring mechanisms and consultation procedures for implementing ESS 2. The Bank should also examine possibilities of working jointly with other MDBs that have had years of prior experience in implementing labour safeguards. Joint work could take place, for example, in training of staff and project managers on labour standards requirements, and in establishing effective monitoring and information-gathering procedures to identify risks of safeguards violation.

Global Unions' recommendations

Measures to support economic recovery

25. The IMF and World Bank should

- Support and help implement a global recovery strategy aimed at boosting aggregate demand and consisting of a policy mix of public investment stimulus and coordinated wage increases to reverse the falling labour share in national income.
- Contribute, as part of this strategy, to public investments in education, the care economy, water and sanitation and other quality public services, including actions to support the integration of migrants and refugees.
- Support public investments in energy-efficient infrastructure and climate change mitigation projects to protect against climate change damages, improve long-term productive potential, and support the transition to a low-carbon economy including through the adoption of carbon taxes.

- Support the inclusion in trade and investment agreements of enforceable labour provisions based on ILO standards and the repeal of investor-state dispute settlement mechanisms that undermine governments' right to regulate.

Measures for creating decent work and reducing inequality

26. The IMF and World Bank should

- End the promotion of labour market deregulation, including through its funding conditionality, and instead help to reverse the rise in income inequality by supporting social dialogue, strengthened collective bargaining and robust minimum wages as part of a coherent set of labour market and social policies for more inclusive growth. This work should entail enhanced cooperation with international organizations with expertise in labour market and social policy, such as the ILO and World Health Organization.
- Support gender equality and women's economic empowerment through wage increases, formalization and respect of workers' rights in majority-female sectors, along with public investments, notably in the care economy, to create quality jobs and reduce the burden of unpaid labour.
- Help countries restore or establish fiscal policies that reduce inequality through more progressive tax regimes including through greater tax revenues from higher incomes, and increased coverage of social protection programmes.
- Develop actions to contribute to attainment of the Sustainable Development Goals, which include targets on full and productive employment, protection of workers' rights, reduction of inequality, universal health coverage, universal primary and secondary education, and national social protection systems for all including floors.

27. The World Bank should

- Ensure that its projects and programmes respect fundamental workers' rights and provide safe working conditions and adequate wages, and work jointly with trade unions and the ILO in the implementation of "Environmental and Social Standard 2: Labour and Working Conditions" to ensure that Bank-financed activities comply fully with recognized international labour standards.
- Examine possibilities of joint work with other development banks that have adopted labour safeguards on their implementation, for example in training activities and developing effective monitoring procedures.

Measures for effective financial regulation and taxation

28. The IMF should

- Support the extension and completion of steps taken since 2008 to correct under-regulation of the financial sector, such as shadow banking systems, too-big-to-fail financial groups and under-taxation of the financial industry, and oppose efforts to roll back the measures already adopted.
- Support the creation of a multilateral framework for negotiating binding international debt restructuring agreements when countries face unsustainable sovereign debt.
- Promote stronger actions to counter the erosion of tax bases and achieve reform of taxation systems in order to move towards broader-based and more progressive taxes, and to shift taxation from employment to environmentally damaging and non-productive activities.
- Support stronger measures to ensure that fiscal revenue is not lost through tax havens by requiring automatic exchange of information and action to stop base erosion and profit shifting by multinational enterprises.

- Support the introduction of financial transactions taxes to discourage speculative behaviour and create new sources of finance, including by offering assistance for the coordinated implementation of the comprehensive FTT initiative supported by several Eurozone countries.

Annex V

Statement by the Intergovernmental Group of 24 at the 2017 Spring meeting of the World Bank and the International Monetary Fund (excerpts)

1. We held our ninety-seventh meeting in Washington D.C. on April 20, 2017 with Abraham Tekeste, Minister of Finance and Economic Cooperation of Ethiopia in the Chair, Ravi Karunanayake, Minister of Finance of Sri Lanka as First Vice-Chair; and Julio Velarde, Governor of the Central Bank of Peru as Second Vice-Chair.

Financing for Development

8. Strong fiscal frameworks are essential to mobilize domestic resources to effectively support development efforts. We are encouraged by the progress made in improving tax revenue-to-GDP ratios and enhancing spending efficiency in EMDCs. Progressive and growth-enhancing tax policies and expenditure measures also play an important role in improving income equality and broadening opportunity. We underscore the important role of IFIs and donors in supporting capacity building for revenue mobilization and encourage more peer learning and capacity building among EMDCs through collaborative platforms. We welcome the work of the Platform for Collaboration on Tax and look forward to its engagement with tax officials in EMDCs.

9. We welcome ongoing initiatives on international tax cooperation such as the Automatic Exchange of Information (AEoI) initiative and the Base Erosion and Profit Shifting (BEPS), and call for a framework that ensures effective participation of EMDCs. We support the development of a digital global platform with least compliance cost for implementation of AEoI. We appreciate the work of the UN Tax Committee and encourage multilateral support to upgrade the Committee to an intergovernmental body to enhance the voice of EMDCs on international tax policy matters. We also call for more attention to developing fair tax rules to guide the taxation of multinational corporations and for international cooperation to prevent harmful international tax competition, negative spillovers from shifts in tax policies in major countries, and illicit financial flows ....

Reforming the Bretton Woods Institutions

15. We support a quota-based, adequately-resourced IMF that is less dependent on borrowed resources. We call for the full implementation of the 2010 Governance Reforms on Board Representation. We call for the completion of the 15th General Review of Quotas, including a new quota formula, by the Spring Meetings of 2019 and no later than the Annual Meetings of 2019. We call for a revised quota formula that further shifts quota shares from AEs to dynamic EMDCs, reflecting their growing weight in the global economy, while protecting the quota share of the poorest countries, and puts greater weight to GDP PPP within the GDP blend. The realignment of quota shares must not come at the expense of other EMDCs. We reiterate our longstanding call for a third Chair for Sub-Saharan Africa, provided that it does not come at the expense of other EMDCs' Chairs.

16. We look forward to a World Bank's Shareholding Review that upholds the Istanbul Principles to achieve equitable voting power between developed and developing and transition countries (DTCs), and produces an outcome that is broadly acceptable to the membership, while protecting the smallest poor countries. We call for the timely implementation of the Lima Roadmap. As the review moves toward the conclusion of the new shareholding package, we call for exploring options to ensure a meaningful realignment with a balanced shareholding outcome, including allocations in line with the agreed formula, special allocations, forbearance, and limits on dilution of individual DTCs.

17. We reiterate our support for a stronger WBG to provide continued assistance to developing countries of all income levels, as laid out in its Forward Look. In the meantime, we are concerned with the IBRD's and IFC's strained financial capacity and the consequent

expected decrease in annual lending over the coming years. This will adversely affect the WBG's ability to engage its member countries and to catalyze private financing, which are essential to meet the ambition of its Forward Look. To strengthen the financial capacity of the IBRD and IFC and build on their ability to leverage their shareholders' capital, we call for exploring all options, including capital increases, further balance sheet optimization, and review of financial transfers from IBRD and IFC to IDA. Furthermore, we recognize the importance of having a balanced portfolio, which contributes to the financial sustainability of IBRD. We welcome the shift in the WBG's development financing approach towards greater strategic use of official resources to further catalyze public and private investments and mobilize private capital.

18. We call for strengthening the efforts of the IMF and the WBG towards greater representation of under-represented regions and countries in recruitment and career progression, including at managerial levels. We reiterate the importance of staff diversity and gender balance at all levels, including diversity of educational institutions.

Annex VI

Declaration of the Coalition on Human Rights and Development, Petition of 14 July 2016

1. (Washington, July 14, 2016) — Development banks should respect human rights in their investments around the world and ensure their activities are not putting human rights defenders at risk, the Coalition for Human Rights in Development said today in a joint petition signed by over 150 development, human rights, and environment groups.

2. Major development banks have long touted the importance of public participation for effective development, the organizations said. But a growing number of governments have been shrinking the space for safe and effective participation in development processes through criminalizing activities by land, environment, and human rights activists and adopting restrictions on nongovernmental groups.

> "I hope that civil society will have the opportunity to contribute towards sustainable development," said Abhijeet, an Indigenous community member in Nepal who does not want his identity disclosed for security concerns. "Unfortunately, the fundamental human rights of many peoples are being systemically violated as a result of development projects. And when we help communities defend their rights we are met with threats and violent attacks."

3. The petition is directed to international financial institutions (IFIs), including the World Bank, African, Asian, European, and Inter-American Development Bank, as well as the newest institutions, the Asian Infrastructure Investment Bank, and BRICS New Development Bank.

4. In March 2016, Berta Cáceres, a renowned indigenous land rights and environmental defender in Honduras, was killed in the middle of the night as she slept in her bed. Two of those facing charges for Cáceres' murder were employees of a company involved in the construction of the Agua Zarca dam, a project that Cáceres and her organization, Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), have long opposed and campaigned against. The murder sparked a high-profile movement to demand accountability of the Dutch, Finnish, and Central American banks financing Agua Zarca for failure to ensure their investments weren't fuelling human rights abuses.

5. But as recent reports have documented, the Cáceres case is not unique.

> "In Uzbekistan, the World Bank is pouring money into projects that benefit the government's abusive cotton sector, marred primarily by systemic forced labor," said Dmitry Tikhonov, an Uzbek human rights defender who is in exile following government reprisals. "The World Bank has not taken any meaningful measures to ensure that independent human rights defenders like me can monitor for abuses linked to the projects they fund. Nor have Bank staff spoken out against the government's attacks on my colleagues and I."

6. Human Rights Watch has recently documented numerous abuses against individuals and communities impacted by projects financed by the World Bank and its arm for corporate loans, the International Finance Corporation.

> "Those who try to engage in development processes have suffered threats, harassment, physical assault, or worse," said Jessica Evans, senior international financial institutions advocate at Human Rights Watch. "Development banks have a responsibility to ensure that their investments don't interfere with human rights, and that people can participate in or express their opinions about development projects without fearing for their safety."

7. The joint petition — International Financial Institutions' responsibility to ensure Meaningful and Effective Participation in their Investments — details ways in which the institutions should

"ensure that the activities they finance respect human rights and that there are spaces for people to participate in the development of IFI projects and hold IFIs to account without risking their security." The organizations call on the financial institutions "to actively support the realization of rights to freedom of expression, assembly, and association, and related human rights, including economic, social and cultural rights in all their activities."

"Development banks and their member states can't hope to achieve sustainable development or eliminate poverty if their investments are contributing to human rights violations or if those who are meant to benefit from development find themselves subjected to abuse," said Adam Shapiro, Head of Communications and Visibility for Front Line Defenders. "The banks should take responsibility for the outcomes of their investments and take meaningful action to safeguard human rights defenders on the ground."

Annex VII

Summary of CAO Cases

1. The CAO investigation of IFC Investment in Eco Oro Minerals Corp. Ltd., a Canadian mining company conducting open-pit mining in Colombia. Concerning the lack of consultation and disclosure the CAO concluded:

> "IFC identified significant gaps in the company's stakeholder engagement strategy as the project proceeded. This became evident in late 2009, following the submission of the open-pit mine EIA to the government that was rejected due to non-conformance with national requirements. IFC recognized that the project faced considerable opposition from the citizens of Bucaramanga. At this point IFC recommended that the company improve its stakeholder engagement strategy so as to strengthen community support. CAO notes that the limited scope applied to the project at appraisal and categorization of the investment for IFC's purposes did not reflect affected community members' understanding of risks."

2. With regard to community health, safety and security, CAO determined that:

> "there was not sufficient information to establish whether IFC assured itself of the company's compliance with PS4 requirements."

3. With regard to conservation and sustainable natural recourse management, CAO concluded:

> "IFC supervision documentation does not show substantive progress on the completion of necessary studies. IFC has not pursued a remedy, but has made subsequent investments in the company."

4. The CAO investigation in Corporación Dinant S.A. de C.V., Honduras, published in December 2013 made findings that should have motivated IFC to fundamentally review its practices:

> "IFC was or should have been aware of a series of public allegations and negative perceptions in relation to its client that went significantly beyond those that were considered in the course of its integrity due diligence process… The detailed six-part integrity due diligence process should have been adhered to. IFC's failure to do this was out of compliance with the relevant procedure. …IFC's failure to disclose the Dinant E&S Assessment was not compliant with its Policy on Disclosure of Information (para 13). IFC remains non-compliant on this point. IFC supported a breach of Performance Standard 1 (paras 20 & 26) by (a) accepting the client's disclosure of a modified translation of the ESRS in the place of the E&S Assessment, and (b) failing to assure itself that the client's ESAP was disclosed to affected communities in an accessible form. IFC failed to ensure that the Dinant E&S Assessment met the consultation requirements set out in PS1 (para.21) … IFC failed to adequately assess its client's performance against the full range of ESAP CODs that had fallen due prior to making its November 2009 disbursement to Dinant … IFC failed to "develop and retain the information needed to assess the status of [its client's] compliance with the Performance Standards during supervision …

5. In the light of the above, IFC decided to continue financing Dinant indirectly, through loans to Honduran Banks. The CAO Investigation of IFC Environmental and Social performance in relation to Investments in Banco Financiera Comercial Hondureña concerned the circumvention of WB rules concerning upper limits for loans to projects by providing the loans to banks that would in turn loan to the project — no strings attached. The IFC had already lent $15 million to an agribusiness company in Honduras, which was under investigation in connection to allegations of violence against farmers on and around Dinant palm oil plantations. The CAO found that:

> "IFC took insufficient measures to identify activities where Ficohsa was exposed to environment and social risk through its existing portfolio. This is of particular concern given background E&S risk that emerges from the regulatory and governance context in which Ficohsa was operating."

6. CAO further noted that IFC had failed to conduct an adequate review of Ficohsa's social and environmental management system, or its capacity to implement IFC's environmental and social requirements.

> "As a result, IFC acquired an equity stake in a commercial bank with significant exposure to high risk sectors and clients, but which lacked capacity to implement IFC's environmental and social requirements …This included additional exposure to Dinant, a company which IFC knew to be affected by a violent land conflict."

7. In relation to the decision to disburse, CAO found that IFC's review of the applicable conditions of disbursement did not comply with the requirement that E&S staff clear any E&S conditions following a review of evidence of compliance:

> "CAO finds that IFC cleared disbursement against its investment agreements, without assuring itself that Ficohsa had submitted the environmental and social information that was required."

8. In relation to project supervision CAO found that:

> "IFC had not assured itself in an adequate or timely manner that Ficohsa was operating as envisaged at the time of appraisal or that Ficohsa was applying the Performance Standards to its sub-projects".

9. In relation to Dinant, CAO found that:

> "highly relevant information on the conflict and related D&S risks surrounding Dinant, that was held by members of IFC's Dinant investment team, was not shared with key members of its Ficohsa team, even though there were staff working across both teams … By waiving a key financial covenant and then taking an equity position in Ficohsa, however, IFC: (a) increased its exposure, and (b) facilitated a significant ongoing flow of capital to Dinant, outside the framework of its environmental and social standards; and thus at a time when IFC management was aware of serious unmitigated environmental and social risks regarding its agribusiness client."

10. This remarkable investigation also sought to explain the underlying causes of the numerous instances of non-compliance. CAO observed:

> "a primacy of financial considerations in IFC's decision making". CAO also noted "a siloing of information with the result that relevant information was not shared among key members of IFC's Ficohsa team."

Annex VIII

Inspection Panel Form — Sample form

(More information about the Inspection Panel Form is available at: http://ewebapps.worldbank.org/apps/ip/Documents/Guidelines_How%20to%20File_for_web.pdf)

To: Executive Secretary, the Inspection Panel
1818 H Street NW, MSN 10-1007,Washington,
DC 20433, USAEmail: ipanel@worldbank.org
or the appropriate World Bank Country/Regional Office

- We [insert names] live and/or represent others who live in the area known as [insert name of area].
- Our addresses are attached.
- We have suffered, or are likely to suffer, harm as a result of the World Bank's failures or omissions in the [insert name and/or brief description of the project or program] located in [insert location/country].
- [Describe the damage or harm you are suffering or are likely to suffer from the project or program.]
- [List (if known) the World Bank's operational polices you believe have not been observed.]
- We have complained to World Bank staff on the following occasions [list dates] by [explain how the complaint was made]. No response was received, [or] we believe that the response received is not satisfactory as it does not answer or solve our problems for the following reasons:
- We request the Inspection Panel recommend to the World Bank's Executive Directors that an investigation of these matters be carried out.

Signatures:

Date:

Contact address, telephone number, fax number, and e-mail address:

List of attachments

We [do/do not] authorize you to disclose our identities

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Corrigendum

Paragraph 12

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